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<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS,) Plaintiff,) VS.) ERIC H. HOLDER, JR. in his) official capacity as Attorney) General of the United States,) Defendant,) ERIC KENNIE, et al.,) Defendant-Intervenors,) TEXAS STATE CONFERENCE OF) CASE NO. 1:12-CV-00128 NAACP BRANCHES,) (RMC-DST-RLW) Defendant-Intervenors,) Three-Judge Court TEXAS LEAGUE OF YOUNG VOTERS) EDUCATION FUND, et al.,) Defendant-Intervenors,) TEXAS LEGISLATIVE BLACK) CAUCUS, et al.,) Defendant-Intervenors,) VICTORIA RODRIGUEZ, et al.,) Defendant-Intervenors.) ***** ORAL DEPOSITION OF JULIA RATHGEBER MAY 29, 2012 *****</p>	<p>1 2 3 4 A P P E A R A N C E S FOR THE PLAINTIFF, STATE OF TEXAS: 5 Matthew Frederick Stacey Napier 6 OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548 8 209 West 14th Street 8th Floor 9 Austin, TX 78701 (512) 936-1307 10 matthew.frederick@texasattorneygeneral.gov stacey.napier@texasattorneygeneral.gov 11 FOR THE DEFENDANT, HOLDER, ET AL: 12 Risa Berkower Spencer Fisher 13 Ernest McFarland Elizabeth S. Westfall Jennifer Maranzano Bruce Gear Michelle McLeod 14 U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW 17 NWB - Room 7202 Washington, DC 20530 (202) 305-7766 18 risa.berkower@usdoj.gov spencer.fisher@usdoj.gov 19 20 FOR THE DEFENDANT-INTERVENOR TEXAS STATE CONFERENCE OF NAACP BRANCHES AND THE MEXICAN AMERICAN LEGISLATIVE CAUCUS: 21 Ezra D. Rosenberg DECHERT, LLP 23 Suite 500 902 Carnegie Center Princeton, NJ 08540-6531 (609) 955-3200 25 ezra.rosenberg@dechert.com</p>
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<p>1 ORAL DEPOSITION OF JULIA RATHGEBER, produced as a 2 witness at the instance of the Defendant, was duly 3 sworn, was taken in the above-styled and numbered cause 4 on the MAY 29, 2012, from 8:21 a.m. to 4:21 p.m., before 5 Chris Carpenter, CSR, in and for the State of Texas, 6 reported by machine shorthand, at the offices of The 7 United States Attorney's Office, 816 Congress Avenue, 8 Suite 1000, Austin, Texas 78701, pursuant to the Federal 9 Rules of Civil Procedure and the provisions stated on 10 the record or attached hereto.</p> <p>11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 FOR THE TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND INTERVENORS: 2 3 Adam M. Harris 4 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP One New York Plaza 4 New York, New York 10004 (212) 859-8953 5 adam.harris@friedfrank.com 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



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15	Justice	15	Q. This is the deposition of Julia Rathgeber. Is
16		16	that the correct pronunciation?
17		17	A. "Rath-gaber," but that's okay.
18		18	Q. "Gaber," okay. In the case State of Texas
19		19	versus Holder, Case Number 12-CV-128 in the U.S.
20		20	District Court for the District of Columbia. My name is
21		21	Risa Berkower, as you just heard.
22		22	Can you give us your full name, please?
23		23	A. Julia Jeffrey Rathgeber.
24		24	Q. Have you ever been known by other names?
25		25	A. My maiden name, but that's it.



<p style="text-align: center;">9</p> <p>1 Q. Which is?</p> <p>2 A. Jeffrey.</p> <p>3 Q. Okay. Are you represented here by counsel</p> <p>4 today?</p> <p>5 A. Yes, I am.</p> <p>6 Q. Who is that?</p> <p>7 A. Matt and Stacey.</p> <p>8 Q. And when did that representation begin?</p> <p>9 A. I don't know. January. Whenever we got sued.</p> <p>10 Q. Okay.</p> <p>11 A. I guess.</p> <p>12 Q. So earlier this year?</p> <p>13 A. Yeah. Whenever I got notice is when they</p> <p>14 started taking interest in my position.</p> <p>15 Q. So at the beginning of this lawsuit?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You've been placed under oath, so it's</p> <p>18 important to testify truthfully, accurately, and</p> <p>19 completely. And the court reporter will prepare a</p> <p>20 transcript of everything that's said today. So in order</p> <p>21 to create as clear a transcript as possible, please</p> <p>22 respond to my questions verbally. No head shaking or</p> <p>23 nodding. And please wait for me to finish the question</p> <p>24 before you answer, and I'll do the same when you're</p> <p>25 answering.</p>	<p style="text-align: center;">11</p> <p>1 Q. I think in the past, he has interposed an</p> <p>2 objection based on privilege. So just to be clear, if</p> <p>3 you're not going to answer, say, "I'm following the</p> <p>4 instruction; it's privileged."</p> <p>5 A. Okay.</p> <p>6 Q. Do you understand these instructions?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you have any questions about any of</p> <p>9 them?</p> <p>10 A. Not so far.</p> <p>11 Q. Are you on any medication today that would</p> <p>12 affect your ability to testify?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Is there any reason why you can't testify</p> <p>15 truthfully and accurately today?</p> <p>16 A. No.</p> <p>17 Q. So I may use some shorthand today. If I use</p> <p>18 the term Lieutenant Governor, I'm referring to</p> <p>19 Lieutenant Governor David Dewhurst or anyone who is</p> <p>20 acting an as agent on his behalf.</p> <p>21 I may use the terms voter ID and photo ID</p> <p>22 interchangeably during the deposition. I want you to</p> <p>23 interpret the term broadly to mean a requirement that a</p> <p>24 voter present a form of identification, whether it has a</p> <p>25 photo or otherwise, when voting in person before being</p>
<p style="text-align: center;">10</p> <p>1 A. Okay.</p> <p>2 Q. I'll try to ask you clear questions. If you</p> <p>3 don't understand a question, let me know, then you can</p> <p>4 interrupt. If you wish to stop and take a break, please</p> <p>5 tell me, and I'll try to accommodate you, but we're</p> <p>6 under a very tight schedule today, as you know, so we'll</p> <p>7 try to keep our breaks relatively short. I think that</p> <p>8 we are under the understanding that you needed to leave</p> <p>9 by 3:30.</p> <p>10 A. Yes.</p> <p>11 Q. So we're going to keep that in mind as we go</p> <p>12 through.</p> <p>13 From time to time, your lawyer may make an</p> <p>14 objection, or lawyers, as the case may be. If they are</p> <p>15 making their objections for the record, unless they</p> <p>16 instruct you not to answer the question, you can go</p> <p>17 ahead and answer anyway. If they counsel you not to</p> <p>18 answer or to answer only to the extent that information</p> <p>19 is not privileged, please clarify for the record whether</p> <p>20 or not you're answering or not answering completely</p> <p>21 based on his instruction, just so it's clear for the</p> <p>22 record.</p> <p>23 A. Okay.</p> <p>24 Q. Does that make sense?</p> <p>25 A. I think so.</p>	<p style="text-align: center;">12</p> <p>1 permitted to vote by regular ballot. Does that make</p> <p>2 sense?</p> <p>3 A. Yes.</p> <p>4 Q. When I refer to the terms "minority voters," I</p> <p>5 mean voters who are not White, nonAnglo. Do you</p> <p>6 understand these terms?</p> <p>7 A. Yes.</p> <p>8 Q. If you have any questions about what I mean,</p> <p>9 either now or any time, just ask.</p> <p>10 So have you ever been deposed before?</p> <p>11 A. Yes.</p> <p>12 Q. How many times?</p> <p>13 A. I think once or twice.</p> <p>14 Q. Do you remember the case names?</p> <p>15 A. No.</p> <p>16 Q. Do you remember what kind of case it was?</p> <p>17 A. Family business.</p> <p>18 Q. Do you remember what court it was in?</p> <p>19 A. No.</p> <p>20 Q. State court or federal court?</p> <p>21 A. State.</p> <p>22 Q. Here in Texas?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever been a party in litigation?</p> <p>25 A. Yes.</p>



<p style="text-align: center;">13</p> <p>1 Q. How many times?</p> <p>2 A. Once or twice.</p> <p>3 Q. Do you remember the nature of the proceeding?</p> <p>4 A. A family land dispute, yes.</p> <p>5 Q. Okay. And --</p> <p>6 A. State court.</p> <p>7 Q. State court? Do you remember the case names?</p> <p>8 A. No.</p> <p>9 Q. Okay. Have you ever personally been the</p> <p>10 plaintiff or a defendant in a lawsuit?</p> <p>11 A. I've been part of a group, yes, for family land</p> <p>12 deals.</p> <p>13 Q. Okay. Who were you suing or defending against?</p> <p>14 A. Family who wanted different parts of the land.</p> <p>15 Q. Okay. Have you ever been involved in a case</p> <p>16 where the State of Texas was the plaintiff or defendant?</p> <p>17 A. No.</p> <p>18 Q. What did you do to prepare for today's</p> <p>19 deposition?</p> <p>20 A. I met with the AG's Office attorney, and I</p> <p>21 looked through my e-mails that were submitted to the</p> <p>22 AG's Office, and I re-read Senate Bill 14 briefly. I</p> <p>23 mean, just quickly.</p> <p>24 Q. Any other documents you looked at before</p> <p>25 today's deposition?</p>	<p style="text-align: center;">15</p> <p>1 about it?</p> <p>2 A. You know, I may have, but I don't -- I don't</p> <p>3 think so. I -- I don't think so.</p> <p>4 Q. Okay. Anyone else in your office that you may</p> <p>5 have spoken with about the deposition?</p> <p>6 A. Not about the contents of the deposition, only</p> <p>7 that I would be here today.</p> <p>8 Q. So just scheduling?</p> <p>9 A. Yes.</p> <p>10 Q. And who was it that you spoke with, if you</p> <p>11 remember?</p> <p>12 A. Oh, everybody in our office knows where I am</p> <p>13 today.</p> <p>14 Q. Okay. Have you spoken to anyone other than</p> <p>15 your lawyers about this case?</p> <p>16 A. My husband.</p> <p>17 Q. When did you talk to him about it?</p> <p>18 A. He's aware of where I am, too.</p> <p>19 Q. Anyone else on the Lieutenant Governor's staff</p> <p>20 that you haven't mentioned already?</p> <p>21 A. No. I -- I would say, honestly, everybody in</p> <p>22 the office knows that I will be here today, and -- but</p> <p>23 we didn't have a discussion over the subject matter of</p> <p>24 the deposition, just scheduling.</p> <p>25 Q. Okay. Did you bring any documents or notes</p>
<p style="text-align: center;">14</p> <p>1 A. That's it. E-mails. The bill. That's it.</p> <p>2 Q. And when you said you met with the attorneys</p> <p>3 from the AG's Office, who in particular did you mean?</p> <p>4 A. Matt and Stacey.</p> <p>5 Q. Was anybody else present when you had that</p> <p>6 meeting?</p> <p>7 A. No. Sometimes people would walk in and walk</p> <p>8 out, but they were the only ones in the meeting.</p> <p>9 Q. Who were those people; do you remember?</p> <p>10 A. No.</p> <p>11 Q. People that you work with?</p> <p>12 A. No. People from the AG's Office picking up a</p> <p>13 document or leaving, or, you know, that kind of thing.</p> <p>14 Q. Okay. How long did you meet with Stacey and</p> <p>15 Matt?</p> <p>16 A. Less than an hour, 30, 45 minutes.</p> <p>17 Q. Other than your lawyers, did you speak to</p> <p>18 anybody about your deposition today?</p> <p>19 A. My whole office knows where I am. I mean, we</p> <p>20 put down where we are, so yes.</p> <p>21 Q. Did you speak to the Lieutenant Governor about</p> <p>22 your deposition today?</p> <p>23 A. He has a note that I'm going to be here today,</p> <p>24 because otherwise, I'm sure he would be calling.</p> <p>25 Q. Okay. But didn't you speak to him directly</p>	<p style="text-align: center;">16</p> <p>1 with you today?</p> <p>2 A. I have a file, but it's mostly work-related</p> <p>3 stuff.</p> <p>4 Q. What --</p> <p>5 A. It's not voter ID stuff. It's things that I</p> <p>6 was going to do if we have some down time.</p> <p>7 Q. Oh, okay.</p> <p>8 MS. BERKOWER: So I'm going to hand to the</p> <p>9 court reporter -- do I mark this or do you?</p> <p>10 THE REPORTER: Either one.</p> <p>11 MS. BERKOWER: I think this is actually</p> <p>12 100.</p> <p>13 (Exhibit 100 marked for identification.)</p> <p>14 Q. (By Ms. Berkower) Do you recognize this?</p> <p>15 A. Oh, yeah.</p> <p>16 Q. What is it?</p> <p>17 A. It's my notice of deposition.</p> <p>18 Q. Can I direct your attention to Attachment A,</p> <p>19 please?</p> <p>20 A. Sure.</p> <p>21 Q. Did you undertake a search for these documents?</p> <p>22 A. Yes, I did.</p> <p>23 Q. What did you do?</p> <p>24 A. I received instructions from Stacey Napier of</p> <p>25 the AG's Office to search our records, my personal</p>



<p style="text-align: center;">17</p> <p>1 records, for a specific set of search terms, and I did 2 that search according to the requirements that she gave 3 me. And then I printed out of all those e-mails and 4 gave them to our general counsel, who then gave them to 5 the AG's Office,</p> <p>6 Q. Where specifically did you look?</p> <p>7 A. On my computer.</p> <p>8 Q. Did you look in other -- are there other files 9 kept in the office?</p> <p>10 A. I have some paper files, but usually after a 11 legislative session, I get rid of them, and so I did 12 check to make sure I didn't have a voter ID file, but I 13 didn't. So we have a lot of paper, and so I tend to get 14 rid of that kind of stuff and keep the electronic 15 copies.</p> <p>16 Q. When you say you got rid of it, is there 17 another filing area that you keep these files or --</p> <p>18 A. No.</p> <p>19 Q. You just throw them out?</p> <p>20 A. Yes. Once the legislation has gone through the 21 system, it's no longer relevant.</p> <p>22 Q. Okay. And what exactly did you find when you 23 searched?</p> <p>24 A. Oh, I don't know. I think about 20 e-mails 25 that involved the search terms that I was provided by</p>	<p style="text-align: center;">19</p> <p>1 can read that. Did you search for those documents?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Did you find anything responsive?</p> <p>4 A. I don't think I did find anything about a 5 legislative emergency, other than we may have a copy of 6 the proclamation that we provided to the -- the 7 Governor's proclamation that we provided to the AG's 8 Office.</p> <p>9 Q. And directing your attention to Item 3, did you 10 search for those documents?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Did you find anything responsive?</p> <p>13 A. Yes. I think there were some -- some e-mails 14 relating to -- to the drafting of Senate Bill 14.</p> <p>15 Q. What did you do with them?</p> <p>16 A. Provided them to our general counsel, who then 17 gave them to the AG's Office.</p> <p>18 Q. And Item 6, can you direct your attention to 19 that one, please. Did you search for those documents?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Did you find anything responsive?</p> <p>22 A. I would assume so, yes.</p> <p>23 Q. What did you do with them?</p> <p>24 A. Gave them to my general counsel, who gave them 25 to the AG's Office.</p>
<p style="text-align: center;">18</p> <p>1 Stacey Napier.</p> <p>2 Q. What were those search terms, if you remember?</p> <p>3 A. I don't remember. They were technical terms 4 that incorporated all of the words that you requested in 5 these documents on the under the list of the 1, 2, 3s.</p> <p>6 Q. And did you say you conducted the search 7 yourself?</p> <p>8 A. Yes, I did.</p> <p>9 Q. So if you can direct your attention to Item 1 10 in Attachment A. It says -- it asks for all documents 11 and communications, including, but not limited to, those 12 among and between the Office of the Governor, the Office 13 of the Lieutenant Governor, members of the Texas 14 Legislature, the Texas Legislative Council, and other 15 Texas state executive offices and agencies, concerning 16 any or all reasons, justifications, rationales, 17 interests, or purposes in enacting SB 14.</p> <p>18 Did you search for those documents?</p> <p>19 A. Yes, ma'am, I did.</p> <p>20 Q. Did you find any?</p> <p>21 A. I'm not -- I don't remember. I'm assuming that 22 I found some documents relating to Senate Bill 14, 23 because I did put them together and give them to our 24 general counsel.</p> <p>25 Q. And directing your attention to Item 2, if you</p>	<p style="text-align: center;">20</p> <p>1 Q. And again, were these all electronic files?</p> <p>2 A. Yes.</p> <p>3 Q. Directing your attention to Item 11.</p> <p>4 A. I don't remember any on the implementation of 5 Senate Bill 14.</p> <p>6 Q. Okay.</p> <p>7 A. I did do the search, however.</p> <p>8 Q. Okay. And with regard to Item 11, which is 9 related to any and all alternatives to SB 14 or 10 amendments to SB 14, did you search for those documents?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Did you find anything responsive?</p> <p>13 A. I don't remember.</p> <p>14 Q. Okay. If you did find anything responsive, 15 what did you do with them?</p> <p>16 A. I provided them to our general counsel who gave 17 them to the AG's Office.</p> <p>18 Q. And then with regard to Item 12, turning your 19 attention to that one, did you search for anything in 20 Item 12?</p> <p>21 A. Yes.</p> <p>22 Q. Did you find anything responsive?</p> <p>23 A. I think there was a newspaper article, yes.</p> <p>24 Q. Just that one news article?</p> <p>25 A. That's all I remember.</p>



<p style="text-align: center;">21</p> <p>1 Q. What did you do with it? 2 A. Provided it to my general counsel, who gave 3 them to the Attorney General's Office.</p> <p>4 Q. Can you tell me a little bit about your educational 5 background?</p> <p>6 A. Yes. Did you want to know where I went to 7 college?</p> <p>8 Q. Yes, please.</p> <p>9 A. I went to U.T. I graduated from the Plan II 10 Honors Program. I went to the University of Texas Law 11 School and graduated in 1990. I took the bar. I passed 12 the bar. I'm inactive right now.</p> <p>13 Q. Okay.</p> <p>14 A. I don't practice.</p> <p>15 Q. Okay. What is your current job title?</p> <p>16 A. Deputy Chief of Staff and Policy Director for 17 the Lieutenant Governor.</p> <p>18 Q. What was your job prior to your current job?</p> <p>19 A. Policy director for the Lieutenant Governor.</p> <p>20 Q. And what about before that?</p> <p>21 A. I worked at General Land Office, where I did -- 22 I actually did the Homeland Security report, because the 23 week I joined the General Land Office, I was supposed to 24 do water quality planning, and the Lieutenant Governor, 25 then the Commissioner of the General Land Office, was</p>	<p style="text-align: center;">23</p> <p>1 planning and did homeland security instead. 2 Then I moved from the General Land Office, 3 after a year and a half there with the Lieutenant 4 Governor, as he was elected, and moved into my current 5 position, which has expanded since I've been there.</p> <p>6 Q. Okay. So how long have you had your current 7 position?</p> <p>8 A. Since 2003, when he became Lieutenant Governor 9 but it expanded in 2009, I guess, when I became Deputy 10 Chief of Staff.</p> <p>11 Q. Okay. Do you have any experience related to 12 election law?</p> <p>13 A. Other than the legislation that comes through 14 our office related to election, election law, that's the 15 only -- the only experience I have.</p> <p>16 Q. Do you have any experience related to election 17 administration?</p> <p>18 A. No.</p> <p>19 Q. Have you ever volunteered as a poll worker?</p> <p>20 A. No.</p> <p>21 Q. Have you ever witnessed any problems when you 22 were at the polls as a -- well, let me back up. 23 Do you vote here in Texas?</p> <p>24 A. Yes.</p> <p>25 Q. When was last time that you voted?</p>
<p style="text-align: center;">22</p> <p>1 named Chair of the Task Force on Homeland Security, and 2 they needed a staff person to work on it. So instead of 3 doing water quality, I did homeland security.</p> <p>4 Q. Do you have any -- and any other legal jobs?</p> <p>5 A. Yeah. I worked at the Texas Commission on 6 Environmental Quality for three years, and I did work on 7 a number of legislative issues. And then prior to that, 8 I worked for the Lieutenant Governor and the Senate, 9 then Lieutenant Governor Bullock, doing essentially what 10 I do now, policy research.</p> <p>11 Q. Okay. I think I probably went about this the 12 wrong way. Since you graduated law school, can you just 13 list the jobs you've had and the years you had them?</p> <p>14 A. That might have been easier.</p> <p>15 Okay. I left law school and joined the 16 Texas Senate, where I worked at the Senate Research 17 Center and also for the Lieutenant Governor, then 18 Lieutenant Governor Bob Bullock; I worked there for 19 eight years.</p> <p>20 Went to the Texas Commission on 21 Environmental Quality, was there for three years, did 22 strategic planning, which is air quality planning, the 23 water quality planning, and waste quality planning.</p> <p>24 I left there and went to the General Land 25 Office, where I was supposed to do water quality</p>	<p style="text-align: center;">24</p> <p>1 A. Oh, gosh, last week, two weeks ago, week and a 2 half ago. I don't know. About a week ago.</p> <p>3 Q. Okay.</p> <p>4 A. I early voted for this election.</p> <p>5 Q. Have you ever witnessed any problems at the 6 polls when you were voting there?</p> <p>7 A. No.</p> <p>8 Q. Have you ever witnessed anyone try to 9 impersonate another voter?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. How far is your polling site from your house?</p> <p>12 A. Well, I usually vote at my Randalls, which is 13 about two miles from my house. My actual polling site 14 is at a school that's about a mile and a half from my 15 house. And frequently, I vote at the Sam Houston 16 Building which across the street from the Capitol. So I 17 would say Randalls was the most frequent voting place, 18 then probably the Sam Houston Building, and then my 19 actual polling. I almost never vote on actual election 20 day.</p> <p>21 Q. So you usually vote early voting?</p> <p>22 A. Yes.</p> <p>23 Q. Do you ever vote by mail?</p> <p>24 A. I have, but it's been since I was in college, 25 when I was registered to vote in my hometown.</p>



<p style="text-align: center;">25</p> <p>1 Q. What are your current responsibilities for 2 Lieutenant Governor Dewhurst?</p> <p>3 A. Oh, goodness. I manage most of the human 4 resources issues in our office. I prepare and ensure 5 that the appropriate briefing materials are prepared for 6 the Lieutenant Governor's meetings and coordinate the 7 policy staff in their preparation for him. I coordinate 8 -- I coordinate functions within our office to ensure 9 that the appropriate people are working on the 10 appropriate issues. I prepare the briefing materials 11 for the legislative session, so the bill books that are 12 put together for the Lieutenant Governor's review before 13 he hears a bill on the Floor. I don't prepare all that 14 information, but I coordinate its preparation.</p> <p>15 Q. Do you ever assist with issues that may be 16 taken up by the Legislature?</p> <p>17 A. Yes.</p> <p>18 Q. What is your -- what do you with regard to 19 those issues?</p> <p>20 A. It varies depending on the issue. I frequently 21 prepare background materials that explains what the 22 issue is, summarizes the material, ask the appropriate 23 policy staff to summarize material, prepare briefing 24 booklets that include all of the paperwork necessary for 25 legislation, which includes things like the fiscal note</p>	<p style="text-align: center;">27</p> <p>1 MR. FREDERICK: I'm going to object here. 2 As everybody probably expects, I will be objecting on 3 privilege to any questions that seek to discover the 4 Lieutenant Governor or his staff's thought process, 5 mental impressions, or opinions about pending 6 legislation.</p> <p>7 Also, we'll object to any questions that 8 seek the substance of communications between the 9 Lieutenant Governor and his staff about pending 10 legislation or communications between the Lieutenant 11 Governor's Office and other legislators or their staff, 12 state agencies, the Texas Legislative Council or 13 constituents.</p> <p>14 So to the extent you can answer without 15 revealing thought process, mental impressions, or 16 privileged communications, you may do so. But 17 otherwise, I instruct you not to answer on the basis of 18 privilege.</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. (By Ms. Berkower) Do you want to hear the 21 question again?</p> <p>22 A. Yes.</p> <p>23 Q. Are there certain legislative issues in which 24 the Lieutenant Governor is especially interested?</p> <p>25 MR. FREDERICK: The same objection.</p>
<p style="text-align: center;">26</p> <p>1 and the bill analysis, and ensures that the appropriate 2 version of the bill is prepared for the Senate Floor. 3 I occasionally write amendments when 4 people need help drafting an amendment. I talk to the 5 senators if they don't understand or need a summary or 6 preparation on a different -- on whatever issue is 7 coming up before them. I think that about covers it.</p> <p>8 Q. Do you have any areas that you focus on?</p> <p>9 A. No.</p> <p>10 Q. Did you work on voter ID?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Who else in the Lieutenant Governor's worked on 13 voter ID, or worked on voter ID?</p> <p>14 A. Bryan Hebert was the policy person who was 15 primarily responsible for the issue, and he's no longer 16 with our office. I'm sure you know. He was the lead 17 person on the -- on the legislation and did most of the 18 work on it. I helped coordinate the materials for the 19 Lieutenant Governor in preparation for hearing the bill 20 on the Floor. Blaine Brunson helped coordinate with the 21 senators about hearing the bill, and then our general 22 counsel has coordinated materials on this issue with 23 regard to this lawsuit.</p> <p>24 Q. Are there certain legislative issues in which 25 the Lieutenant Governor is especially interested?</p>	<p style="text-align: center;">28</p> <p>1 A. I think I've been instructed not to answer; 2 however, I would say the Lieutenant Governor has always 3 been very focused on the budget.</p> <p>4 MS. BERKOWER: So you're not going to let 5 her answer the yes-or-no question whether there are 6 certain issues that he is interested in, without getting 7 into which those are?</p> <p>8 MR. FREDERICK: No, I didn't say 9 that. She can answer a yes-or-no question.</p> <p>10 A. Yes, the budget.</p> <p>11 Q. (By Ms. Berkower) What's your role with regard 12 to issues that he is especially interested in?</p> <p>13 A. My role doesn't change dramatically for 14 priority issues, although I have never focused on the 15 budget, because we have specific staff that work on 16 budget issues.</p> <p>17 Q. Was voter ID one of the issues in which the 18 Lieutenant Governor was especially interested?</p> <p>19 MR. FREDERICK: I object on the basis 20 privilege. To the extent she is asking a yes or a no 21 question, you may answer if you know, but don't reveal 22 the Lieutenant Governor's thought process or any 23 privileged communications.</p> <p>24 A. I don't know. I think he was interested in 25 handling it professionally, handling the issue</p>



<p style="text-align: center;">29</p> <p>1 professionally.</p> <p>2 Q. (By Ms. Berkower) Do you know of any public</p> <p>3 statements that he made in which he expressed it as a</p> <p>4 priority of his?</p> <p>5 A. Not that I remember.</p> <p>6 Q. When the Lieutenant Governor takes an interest</p> <p>7 in a particular legislative issue, do you assist with</p> <p>8 legislative drafting?</p> <p>9 A. Yes.</p> <p>10 Q. Do you assist with committee work?</p> <p>11 A. No, not usually.</p> <p>12 Q. Why not?</p> <p>13 A. Because the committees do that.</p> <p>14 Q. Do you assist with ensuring passage of that</p> <p>15 particular bill, whatever it may be?</p> <p>16 A. What did you do mean by ensuring passage? I</p> <p>17 make sure all the materials are necessary for the bill</p> <p>18 to be heard on the floor.</p> <p>19 Q. Well, I think -- I guess what I meant is, when</p> <p>20 the Lieutenant Governor takes an interest in a</p> <p>21 particular legislative issue, do you assist him in</p> <p>22 ensuring that that -- whatever bill it is that he is</p> <p>23 behind, gets passed?</p> <p>24 MR. FREDERICK: Objection, vague, and</p> <p>25 object to the extent it assumes facts not in evidence,</p>	<p style="text-align: center;">31</p> <p>1 that the bill may have?</p> <p>2 A. Sometimes the summary section, which is</p> <p>3 provided by the bill's sponsor or author, does talk</p> <p>4 about that. But we don't write that material, so it</p> <p>5 depends on what the senators submit.</p> <p>6 Q. And in a case where there is some sort of</p> <p>7 analysis or research or other study conducted with</p> <p>8 regard to the effect of the bill, is that something that</p> <p>9 would be included?</p> <p>10 A. It depends on whether or not it's in the rules.</p> <p>11 So some of the rules require there -- criminal justice</p> <p>12 bills are required to have a criminal justice policy</p> <p>13 statement associated with them. So that would be part</p> <p>14 the materials that are submitted.</p> <p>15 Q. What about election-related bills?</p> <p>16 A. I'm not aware of any additional materials that</p> <p>17 have to happen. I think that happens after the fact</p> <p>18 when it goes through you.</p> <p>19 Q. Sorry? What was the last thing you said?</p> <p>20 A. When we go through voter bills, frequently,</p> <p>21 they have to go to the federal government for Voting</p> <p>22 Rights Act.</p> <p>23 Q. Oh, okay. You mean for preclearance?</p> <p>24 A. Yes.</p> <p>25 Q. So what type of additional work gets done when</p>
<p style="text-align: center;">30</p> <p>1 but you may answer if you can.</p> <p>2 A. We -- we ensure that we prepare the materials</p> <p>3 in the best way that we know how in order to handle an</p> <p>4 issue professionally, and to that extent yes, we do.</p> <p>5 Q. (By Ms. Berkower) I guess to follow up on</p> <p>6 that: What do you mean by to handle a bill</p> <p>7 professionally?</p> <p>8 A. To ensure that nothing falls through the cracks</p> <p>9 that we have. Every document that we need, that</p> <p>10 everything has been filed according to the rules of the</p> <p>11 Texas Senate; that the pieces are in order, in order to</p> <p>12 hear a piece of legislation.</p> <p>13 Q. And when you say you have every document you</p> <p>14 need, what documents are those?</p> <p>15 A. The bills, according to the Senate rules, are</p> <p>16 required to have a package in order to be heard on the</p> <p>17 floor, and that package includes the appropriate version</p> <p>18 of the bill, that has been filed appropriately,</p> <p>19 including a fiscal note and a bill analysis.</p> <p>20 Q. What does the bill analysis usually contain,</p> <p>21 just as a general matter?</p> <p>22 A. A summary statement of any piece of</p> <p>23 legislation, and then a section-by-section summary of</p> <p>24 that, that piece of legislation.</p> <p>25 Q. Does the analysis usually get into the effect</p>	<p style="text-align: center;">32</p> <p>1 bill needs to get precleared?</p> <p>2 A. Nothing at the time. That happens after the</p> <p>3 bill happens.</p> <p>4 Q. So before the bill is passed, you don't focus</p> <p>5 on anything; you don't conduct any research or anything</p> <p>6 that might be useful when you send it for preclearance?</p> <p>7 MR. FREDERICK: Object as vague. Object,</p> <p>8 assumes facts not in evidence. And I also object on</p> <p>9 privilege to the extent that it calls for thought</p> <p>10 process, mental impressions, or privileged</p> <p>11 communications.</p> <p>12 If you can answer, you may.</p> <p>13 A. I don't remember anything we did to prepare</p> <p>14 this piece of legislation for preclearance.</p> <p>15 Q. (By Ms. Berkower) Did you consider the</p> <p>16 preclearance factors when you were working on the bill?</p> <p>17 A. I did not.</p> <p>18 Q. Do you know if anybody else did?</p> <p>19 A. I don't know.</p> <p>20 Q. Did it come up at all when you discussed the</p> <p>21 bill?</p> <p>22 MR. FREDERICK: Objection. To the extent</p> <p>23 this calls for internal communications in the Lieutenant</p> <p>24 Governor's Office about pending legislation, I will</p> <p>25 instruct you not to answer this question.</p>



<p style="text-align: center;">33</p> <p>1 A. I will not answer this question then. 2 Q. (By Ms. Berkower) Okay. As a general matter 3 for election-related bills, is it something that's 4 discussed?</p> <p>5 MR. FREDERICK: Objection, vague. 6 A. I don't remember it. 7 Q. (By Ms. Berkower) So for any election-related 8 bill that's come before the -- before you in your time 9 working for the Lieutenant Governor, you don't remember 10 any discussions about preclearance prior to the bill's 11 passage?</p> <p>12 MR. FREDERICK: Object. Misstates prior 13 testimony. You may answer if you can. 14 A. The discussion of preclearance would have 15 happened at the committee level, and I don't handle the 16 committee level. So it may have been discussed during 17 the committee hearing, and I don't remember it. 18 Q. (By Ms. Berkower) What about when a bill is in 19 the Committee of the Whole? 20 A. It may have been discussed in the committee, 21 and I didn't -- I don't remember it. 22 Q. Okay. So when the Lieutenant Governor takes an 23 interest in a particular legislative issue, do you 24 communicate with other legislators about the issue? 25 A. Yes.</p>	<p style="text-align: center;">35</p> <p>1 instruct you not to answer. 2 A. I will not answer that question. 3 Q. (By Ms. Berkower) Does he only contribute to 4 drafting for bills that are a priority for him? 5 A. No. 6 MR. FREDERICK: Objection. 7 Q. (By Ms. Berkower) Are you not answering based 8 on advice of counsel? 9 A. Yeah. No. The answer is no. 10 Q. The answer is no, he contributes to other 11 bills, too? 12 A. Yes. 13 Q. Okay. What is your role in the drafting? 14 A. It varies by the piece of legislation, and 15 typically, I don't have a role with drafting. The 16 policy person handling that specific issue handles it, 17 but sometimes I will assist if somebody is really busy. 18 Q. Do you review drafts when other people are -- 19 A. Yes. 20 Q. What is your role, generally, when the 21 Lieutenant Governor may vote on a bill? 22 A. He hasn't voted very often, so I don't think 23 I've had a role, other than preparing the materials that 24 we would prepare for any bill. 25 Q. You said he hasn't voted very often? On the</p>
<p style="text-align: center;">34</p> <p>1 Q. Do you ever communicate with the Governor's 2 Office? 3 A. Yes. 4 Q. Do you ever handle public relations or anything 5 of that sort for the Lieutenant Governor? 6 A. Not really. I will fact check a quote to 7 ensure that it's accurate, but I don't prepare the 8 public relations materials. 9 Q. Do you communicate with any interest groups? 10 A. If they want to come and talk to our office, 11 yes. 12 Q. Do you ever talk to constituents? 13 A. Yes. 14 Q. In any given legislative session, how many 15 bills does the Lieutenant Governor contribute to 16 drafting? 17 A. Oh, Lord. More than he should. I really -- he 18 doesn't draft as many as he discusses with the 19 senators. I would say that drafting, he participates in 20 maybe 20 bills. But amendments, he may participate in 21 up to 200 bills. 22 Q. How does he decide which bills that he 23 contributes to drafting? 24 MR. FREDERICK: Objection on the basis of 25 privilege. It calls for his thought process, and I</p>	<p style="text-align: center;">36</p> <p>1 occasions where he did vote, did you provide him with 2 any advice on how to vote? 3 A. No. 4 Q. Did anybody in your office? 5 A. Not that I'm aware of. 6 Q. Do you remember when exactly he voted? 7 MR. FREDERICK: I'll object, vague, but 8 you can answer. 9 A. I think he's voted maybe three times since he's 10 been Lieutenant Governor. One was a gaming bill. One 11 was this bill. And I don't remember the third one, but 12 maybe it was school finance. 13 Q. (By Ms. Berkower) How did he decide when he was 14 going to vote? 15 MR. FREDERICK: Objection. It calls for 16 internal thought process. I instruct you not to answer 17 on the basis of privilege. 18 A. I will not answer that. 19 Q. (By Ms. Berkower) Have you ever drafted lists 20 of priorities, priority -- sorry. I'll start over. 21 Have you ever drafted lists of policy 22 priorities for the Lieutenant Governor? 23 A. Yes. 24 Q. When did you do that? 25 A. Every session, he gives a speech on his policy</p>



<p style="text-align: center;">37</p> <p>1 priorities, and we talk to him, and then I write them 2 down.</p> <p>3 Q. What were the Lieutenant Governor's legislative 4 priorities in --</p> <p>5 MR. FREDERICK: I'll object only to the 6 extent this calls for you to reveal the Lieutenant 7 Governor's thought process or mental impressions about 8 any pending legislation or the contents of privileged 9 communications. But if you can answer without revealing 10 that, you may do so.</p> <p>11 A. Governor Dewhurst always has the budget as the 12 number one priority, balancing the budget. And beyond 13 that, he works with the senators to determine what he'd 14 like to -- what they would like to accomplish and what 15 he would like to accomplish, and then we develop a 16 master list of major issues for the legislative 17 session. They may not be his priorities. They may be 18 senatorial priorities, but he works with the senators to 19 get various topics accomplished.</p> <p>20 Q. (By Ms. Berkower) Do you ever draft speeches 21 for the Lieutenant Governor?</p> <p>22 A. Not often, no.</p> <p>23 Q. When have you drafted speeches?</p> <p>24 A. Oh, I edit speeches from time to time to ensure 25 that they are factually correct, but I don't draft them.</p>	<p style="text-align: center;">39</p> <p>1 Q. Oh, wow. Can you group them into general -- 2 I'm not going to ask you to name all of them.</p> <p>3 A. Okay. We have a communications group that 4 handles all of our correspondence, and they work with 5 the press people. The correspondence people and the 6 press people work with our communications director, and 7 they write the speeches and the letters and that sort of 8 thing.</p> <p>9 Then we have policy staff that are divided 10 by issue area, and there are about 13 of those.</p> <p>11 The budget has its own little policy team, 12 and we have two or three people who work on budget full 13 time, and then other people who work on segments of the 14 budget. What else do we have? We have administrative 15 staff, and I believe that's about it.</p> <p>16 Q. So you said that you have policy staff divided 17 by issue area?</p> <p>18 A. Yes.</p> <p>19 Q. Was one where certain of the staff members 20 assigned to voter ID issues?</p> <p>21 A. Yes, Bryan handles voter issues. Bryan Hebert.</p> <p>22 Q. Anybody else?</p> <p>23 A. Maybe Frank Battle, but mostly Bryan.</p> <p>24 Q. And what was his role with regard to that 25 issue?</p>
<p style="text-align: center;">38</p> <p>1 Q. Do you remember which speeches you've edited?</p> <p>2 A. No.</p> <p>3 Q. Did you ever work on speeches concerning voter 4 ID?</p> <p>5 A. Not that I remember.</p> <p>6 Q. Did you ever draft talking points for the 7 Lieutenant Governor?</p> <p>8 A. No. Oh, not on this topic.</p> <p>9 Q. Have you on other topics?</p> <p>10 A. Yes.</p> <p>11 Q. Which topics?</p> <p>12 A. I know I have coordinated with the staff on a 13 number of topics, including the budget and -- oh, I 14 don't know, we -- I mostly fact check other people's 15 materials.</p> <p>16 Q. So do you review the talking points before they 17 go out?</p> <p>18 A. Half the time, yes.</p> <p>19 Q. Do you ever draft press releases for the 20 Lieutenant Governor?</p> <p>21 A. No, I never have.</p> <p>22 Q. How many staff does the Lieutenant Governor 23 have?</p> <p>24 A. It varies during session and off of session.</p> <p>25 Right now, I believe we have 26.</p>	<p style="text-align: center;">40</p> <p>1 A. He was the policy staff that handles elections 2 law.</p> <p>3 Q. And how did you -- were you involved, then, 4 when he would -- with the -- were you involved with his 5 efforts on voter ID?</p> <p>6 A. I don't know what you mean by that. I 7 supervised him.</p> <p>8 Q. When he was working on voter ID, what was your 9 role?</p> <p>10 A. I supervised Bryan Hebert.</p> <p>11 Q. How frequently did you talk to him or 12 communicate with him about the issue?</p> <p>13 A. I talked to all of the policy staff every day 14 during the legislative session to ensure that I'm aware 15 of what it is they're doing and if they need any help or 16 direction from the Lieutenant Governor or they need to 17 talk to him about any specific issue. That's part of my 18 role.</p> <p>19 Q. What about when the legislature isn't in 20 session?</p> <p>21 MR. FREDERICK: Object to the form, but 22 you may answer.</p> <p>23 A. What -- what are you asking?</p> <p>24 Q. (By Ms. Berkower) Well, okay. Does the policy 25 staff ever continue working on an issue when the</p>



<p style="text-align: center;">41</p> <p>1 legislature is not in session?</p> <p>2 A. Typically, they work on the interim committee</p> <p>3 charges, so there are different issues that the</p> <p>4 Lieutenant Governor has charged the interim committees</p> <p>5 to consider. So those would be in preparation of</p> <p>6 legislation for the next legislative session. But they</p> <p>7 don't work on things we already passed.</p> <p>8 Q. So my next question might sound a little silly.</p> <p>9 Are there any privileges you are asserting today?</p> <p>10 A. Yep.</p> <p>11 Q. Can you list all of them?</p> <p>12 A. Nope. I'm sure that there's legislative</p> <p>13 privilege that's the number one privilege, but I don't</p> <p>14 know what else we may be asserting today.</p> <p>15 Q. Are you asserting attorney-client privilege</p> <p>16 today?</p> <p>17 A. Yes.</p> <p>18 Q. In what way?</p> <p>19 A. I think when the issue arises, we'll know it.</p> <p>20 Q. Do you have an attorney-client relationship</p> <p>21 with Mr. Dewhurst?</p> <p>22 A. No.</p> <p>23 Q. Does anybody else in the Lieutenant Governor's</p> <p>24 Office?</p> <p>25 A. I think his general counsel does, yes.</p>	<p style="text-align: center;">43</p> <p>1 files are maintained?</p> <p>2 A. We have shared files. We have individual</p> <p>3 files. They are all maintained by the Texas Legislative</p> <p>4 Council.</p> <p>5 Q. Are there any records maintained in any other</p> <p>6 locations, such as a storage facility?</p> <p>7 A. Not that I'm aware of. We may have stored some</p> <p>8 of the early correspondence if we were running out of</p> <p>9 storage space, but that would have been at the library</p> <p>10 in archives, if they are. I don't think we've sent them</p> <p>11 over there, but we may have.</p> <p>12 Q. Does the Lieutenant Governor have more than one</p> <p>13 office?</p> <p>14 A. Yes. But not as Lieutenant Governor. He has</p> <p>15 his personal offices.</p> <p>16 Q. And does he have also a campaign office?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know how the records are maintained at</p> <p>19 any of the other offices?</p> <p>20 A. No idea.</p> <p>21 Q. Do you maintain any files specific to --</p> <p>22 specific to the particular pieces of legislation?</p> <p>23 A. During a legislative session, I do.</p> <p>24 Q. What do you do with those files after the</p> <p>25 legislative session?</p>
<p style="text-align: center;">42</p> <p>1 Q. How are documents maintained in your office?</p> <p>2 A. Mostly electronically. We do have paper files</p> <p>3 of all of our correspondence.</p> <p>4 Q. Is anybody responsible for record retention?</p> <p>5 A. Yes. Our general counsel is, but that's been</p> <p>6 distributed to the appropriate policy staff.</p> <p>7 Q. Do you have a specific retention policy for the</p> <p>8 office?</p> <p>9 A. Yes, we do.</p> <p>10 Q. What is it?</p> <p>11 A. Oh, there's a records retention law, and we</p> <p>12 abide by that law. Actually, we're supposed to keep</p> <p>13 materials, and there are specific timelines required,</p> <p>14 and, I don't know, we -- we follow the law.</p> <p>15 Q. That's Texas State law?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Where are your paper files maintained?</p> <p>18 A. In boxes in the Capitol.</p> <p>19 Q. And where are your electronic files maintained?</p> <p>20 A. On individuals' computers handled by the Texas</p> <p>21 Legislative Council.</p> <p>22 Q. Do you have like a server? Are the computers</p> <p>23 networked?</p> <p>24 A. Yes.</p> <p>25 Q. Is there a specific drive in which electronic</p>	<p style="text-align: center;">44</p> <p>1 A. I throw them out.</p> <p>2 Q. Do you throw them out regardless of whether a</p> <p>3 bill as successful or not?</p> <p>4 A. Frequently, yes.</p> <p>5 Q. With regard to SB 14 in particular, did you</p> <p>6 consider whether it would be helpful or necessary to</p> <p>7 retain your file to assist with the Section 5</p> <p>8 submission?</p> <p>9 MR. FREDERICK: Objection. Calls for</p> <p>10 internal thought process, mental impressions. Instruct</p> <p>11 you not to answer on the basis of privilege.</p> <p>12 A. I will not answer then.</p> <p>13 Q. (By Ms. Berkower) Do you maintain -- have you</p> <p>14 ever archived e-mail concerning particular legislation?</p> <p>15 A. Yes.</p> <p>16 Q. Have you archived any e-mail concerning</p> <p>17 legislation relating to election matters?</p> <p>18 A. Yes, when directed to do so by the Attorney</p> <p>19 General's Office as a result of this lawsuit.</p> <p>20 Q. Oh, but prior to this lawsuit?</p> <p>21 A. No.</p> <p>22 Q. It's our fault.</p> <p>23 Do you have more than one government</p> <p>24 e-mail account?</p> <p>25 A. No.</p>



<p style="text-align: center;">45</p> <p>1 Q. How often do you communicate with the 2 Lieutenant Governor? 3 A. During session, every day, several times a 4 day. During the interim, every other day. 5 Q. How do you usually communicate with him? 6 A. On the -- well, in person during session. On 7 the telephone if he's not in the office. 8 Q. Does the Lieutenant Governor ever use e-mail? 9 A. Rarely. 10 Q. When he does use e-mail, does he use an 11 official government account? 12 A. Not typically. 13 Q. He uses a personal account? 14 A. Yes, or he'll have his secretary send us 15 something. 16 Q. Oh. Does he have an official government 17 BlackBerry? 18 A. No. 19 Q. Or a Smartphone of any kind? 20 A. No. 21 Q. Does he ever use text messaging? 22 A. I have text messaged him, but I don't think he 23 has text messaged me. 24 Q. And when you sent him these text messages, do 25 you send it to his -- an official government-issued</p>	<p style="text-align: center;">47</p> <p>1 Q. And I meant to ask the same question with 2 regard to the Executive Branch, too. How often do you 3 communicate with other members of the Executive Branch's 4 staff? 5 A. Maybe once a week during session. Maybe once a 6 month outside of session. 7 Q. What's the means of communication with them? 8 A. Typically a telephone call. 9 Q. How often does the Lieutenant Governor 10 communicate directly with legislators? 11 A. I don't know, but frequently. Every day during 12 session, frequently. And then outside of session, I 13 don't know how frequently, but he does call them. 14 Q. Does the Lieutenant Governor communicate 15 directly with the staff members of other legislators? 16 A. Rarely, but yes. 17 Q. What means does he use to communicate with 18 them? 19 A. Meetings or telephone calls. 20 Q. What about the Governor's Office; how often 21 does the Lieutenant Governor communicate directly with 22 the Governor's Office? 23 A. I don't know. I would say once a week during 24 session. They have Wednesday morning breakfasts, so 25 that's a visit. And then outside of session, maybe once</p>
<p style="text-align: center;">46</p> <p>1 phone or a personal phone? 2 A. Personal phone. 3 Q. How often do you communicate with other members 4 of the Executive Branch? 5 A. During session, at least once a week. Not in 6 session, maybe once a month. 7 Q. How do you communicate with them? 8 A. It depends on the issues. Sometimes we'll have 9 a meeting and visit. Sometimes we'll call each other. 10 Sometimes we'll e-mail and have lunch. 11 Q. How often do you communicate with members of 12 the Legislature? 13 A. During session, every day. Outside of the 14 session, once a week. One of them once a week. 15 Q. How often -- what is the means in which you 16 communicate with them? 17 A. Typically, they come visit. 18 Q. And when I say the legislators, I meant their 19 staff as well. I should have said or their staff. How 20 often do you communicate with members of the 21 legislators' staff? 22 A. Every day. 23 Q. And how do you communicate with them? 24 A. E-mail or -- during the interim, we -- we 25 typically just visit.</p>	<p style="text-align: center;">48</p> <p>1 a month, depending on the issue. When Governor Perry 2 was traveling, we spoke with him nearly every day. 3 Q. What is the general means of communication with 4 the Governor's Office? 5 A. Typically a telephone call or a visit. 6 Q. In your time working for the Lieutenant 7 Governor, has he ever promised anyone he would 8 prioritize certain -- 9 (Interruption by noise outside conference 10 room.) 11 I'll start that question over. I guess 12 actually I'll go back one question. 13 When the Lieutenant Governor communicates 14 directly with -- when the Lieutenant Governor 15 communicates directly with the Governor's Office, who 16 does he speak with? 17 A. Usually the Governor. 18 Q. Any staff members? 19 A. I'm sure he has, depending on the issue, but 20 typically he just calls Governor Perry. 21 Q. So the meetings you described when -- when I 22 asked you the question before about the Lieutenant 23 Governor's communications with the Governor's Office, 24 you meant he was speaking directly with the Governor? 25 A. Yes. I'm sure he has spoken with his chief</p>



<p>49</p> <p>1 staff as well. But yes, typically.</p> <p>2 Q. In your time working for the Lieutenant</p> <p>3 Governor, has he ever promised anyone he would</p> <p>4 prioritize certain legislative issues?</p> <p>5 MR. FREDERICK: I'll object to the extent</p> <p>6 this calls for privileged communications. But if you</p> <p>7 can answer without revealing privileged communications,</p> <p>8 you may do so.</p> <p>9 MS. BERKOWER: Well, I think, actually,</p> <p>10 promises concerning legislation are not privileged.</p> <p>11 MR. FREDERICK: I think it would depend on</p> <p>12 the person to whom the promise was made. I mean,</p> <p>13 "promise" can be a vague term, so I think a discussion</p> <p>14 between a legislator and the Lieutenant Governor can be</p> <p>15 construed, potentially, as a promise if there is an</p> <p>16 indication that he wants to pass certain legislation.</p> <p>17 So to the extent this question calls for</p> <p>18 communications between the Lieutenant Governor and his</p> <p>19 own staff or other legislators or staff about pending</p> <p>20 legislation, then I would instruct you not to</p> <p>21 answer. But if you can answer without revealing that,</p> <p>22 you may do so.</p> <p>23 A. I don't know how to answer that question</p> <p>24 outside of saying that Governor Dewhurst does work with</p> <p>25 senators to help them pass their legislative packages.</p>	<p>51</p> <p>1 basis of privilege.</p> <p>2 A. I won't answer that question.</p> <p>3 Q. (By Ms. Berkower) What about immigration</p> <p>4 issues; has he ever promised he would prioritize certain</p> <p>5 -- he would -- excuse me. I'll start over that</p> <p>6 question.</p> <p>7 Has he ever promised anyone he would</p> <p>8 prioritize immigration issues?</p> <p>9 MR. FREDERICK: The same objection based</p> <p>10 on privilege. Don't reveal communications between the</p> <p>11 Lieutenant Governor and legislators or their staff or</p> <p>12 his own thought process. But to the extent that you may</p> <p>13 answer without revealing those, you can do so.</p> <p>14 A. I think he has told people he would help them</p> <p>15 or work with them to achieve their objectives.</p> <p>16 Q. (By Ms. Berkower) Including on immigration</p> <p>17 issues?</p> <p>18 A. Yes.</p> <p>19 Q. Including on voter ID issues?</p> <p>20 A. I think --</p> <p>21 MR. FREDERICK: The same objection, but</p> <p>22 you may answer.</p> <p>23 A. I think so.</p> <p>24 Q. (By Ms. Berkower) While you have worked for the</p> <p>25 Lieutenant Governor, how many election-related bills</p>
<p>50</p> <p>1 Q. (By Ms. Berkower) Well, I guess I also meant it</p> <p>2 with regard to people outside the Legislature, including</p> <p>3 the Governor's Office or constituents or outside groups</p> <p>4 or interest groups of any sort.</p> <p>5 A. I think Governor Dewhurst does like, enjoy</p> <p>6 working with people to try and help them achieve their</p> <p>7 objectives. And I think to the extent that that</p> <p>8 qualifies as working together to achieve an objective,</p> <p>9 that's -- that he is willing to do that.</p> <p>10 Q. So to your knowledge, though, has he ever</p> <p>11 promised anyone, outside the other legislators or anyone</p> <p>12 in your office, that he would prioritize certain</p> <p>13 legislation?</p> <p>14 A. I'm having a problem with the word</p> <p>15 "promise." I think he would be willing to say, "Let me</p> <p>16 work with you to achieve your objectives." But that's</p> <p>17 different than saying, "I promise I will do something</p> <p>18 for you."</p> <p>19 Q. Did the legislative issues on which he wanted</p> <p>20 to help others achieve their legislative objective</p> <p>21 include voter ID issues?</p> <p>22 MR. FREDERICK: I'll object to the extent</p> <p>23 this calls for what the Lieutenant Governor wanted.</p> <p>24 That would be his thought process and mental</p> <p>25 impressions. I will instruct you not to answer on the</p>	<p>52</p> <p>1 have you been involved in?</p> <p>2 A. Oh, I have no idea -- no idea.</p> <p>3 Q. A guess?</p> <p>4 A. I have really no idea. We had the Help America</p> <p>5 Vote Act. We've had all kinds of mail-in ballot bills.</p> <p>6 We've had -- I have no idea. Up to a hundred maybe?</p> <p>7 Q. Going back a step, when you said the Governor</p> <p>8 works with senators to work on their objectives and he</p> <p>9 talks to them about their priorities, does he work with</p> <p>10 all senators to work on their objectives?</p> <p>11 A. Yes, he does.</p> <p>12 Q. How does he ensure that he works with all</p> <p>13 senators?</p> <p>14 A. They want to work with him. He has meetings</p> <p>15 with everyone. He has meetings with the chairs on</p> <p>16 Monday nights and the vice chairs on Tuesday nights so</p> <p>17 he has talked to all the Senate, on Mondays and</p> <p>18 Tuesdays, about the upcoming issues of the week. That's</p> <p>19 during the Legislative session. During an interim, he</p> <p>20 typically just waits until they call him and asks for</p> <p>21 help.</p> <p>22 Q. If a particular legislator wanted to be in</p> <p>23 touch with the Lieutenant Governor about a particular</p> <p>24 issue, what would they do to get his attention?</p> <p>25 A. Typically, they walk, during session, to the</p>



<p style="text-align: center;">53</p> <p>1 podium and talk to him about it, or they call him. They 2 all have his cell phone numbers, and sometimes they just 3 come visit.</p> <p>4 Q. Does he work with the minority senators on 5 their objectives?</p> <p>6 A. Yes.</p> <p>7 Q. Does he work with senators of both parties on 8 their objectives?</p> <p>9 A. Yes.</p> <p>10 Q. In the time that you have worked for Lieutenant 11 Governor, how many immigration-related bills have you 12 been involved in?</p> <p>13 A. Again, I have no idea.</p> <p>14 Q. More than ten?</p> <p>15 A. More than ten.</p> <p>16 Q. More than 20?</p> <p>17 A. Probably.</p> <p>18 Q. More than --</p> <p>19 A. I think of immigration as having a very broad 20 description. That would include the budget that handles 21 a lot of immigration-related issues. He refers all the 22 bills, so even if he hasn't worked on a bill, he has 23 referred it to a committee. I would say probably more 24 than 20 immigration-related bills have been referred to 25 committee.</p>	<p style="text-align: center;">55</p> <p>1 MR. FREDERICK: Objection, relevance. 2 Q. (By Ms. Berkower) You may answer. 3 A. My personal belief or my professional belief? 4 I mean, what are you asking me? 5 Q. I guess both. 6 A. I think we should comply with federal law, yes. 7 Q. That's your professional belief? 8 A. And my personal belief. 9 Q. Does the Lieutenant Governor believe that 10 compliance with the Voting Rights Act is important? 11 MR. FREDERICK: Objection, calls for -- 12 objection, relevance. Objection, privilege. I would 13 instruct you not to answer on the basis of privilege. 14 A. I can't answer that. 15 Q. (By Ms. Berkower) Do you or the Lieutenant 16 Governor receive any legal advice on election-related 17 matters before the Senate with regard to Section 5 18 compliance? 19 A. I do think there was testimony in the Committee 20 of the Whole hearing on Section 5 compliance. 21 Q. What about legal advice; do you receive legal 22 advice on Section 5 compliance? 23 MR. FREDERICK: I would object to the -- I 24 would object on the basis of attorney-client privilege. 25 To the extent this already presumes the</p>
<p style="text-align: center;">54</p> <p>1 Q. Okay. Are you familiar with Section 5 of the 2 Voting Rights Act?</p> <p>3 A. Not really familiar. I'm aware of what it is.</p> <p>4 Q. Well, what is your understanding of the 5 requirements of Section 5?</p> <p>6 A. I'm not a voting rights expert by any stretch 7 of the imagination, but my understanding is the intent 8 is to rectify a historical underrepresentation of 9 minorities in the voting process in Texas and seven 10 other states, I think, but...</p> <p>11 Q. How do you ensure that an election-related 12 change to the law complies with Section 5?</p> <p>13 MR. FREDERICK: We'll object. To the 14 extent this calls for thought process, mental 15 impressions, or communications within the Lieutenant 16 Governor's Office or with legislators, I instruct you 17 not to answer on the basis of privilege.</p> <p>18 A. Okay. I cannot answer that question.</p> <p>19 Q. (By Ms. Berkower) I'll take one step back. Do 20 you, just as a yes-or-no matter, ensure that an 21 election-related change to the law complies with 22 Section 5?</p> <p>23 A. No.</p> <p>24 Q. Do you believe that compliance with the Voting 25 Rights Act is important?</p>	<p style="text-align: center;">56</p> <p>1 content of communication with a lawyer, I would instruct 2 you not to answer on the basis of attorney-client 3 privilege.</p> <p>4 A. Okay. I can't answer that.</p> <p>5 MS. BERKOWER: Well, I think we're allowed 6 to ask some foundational questions, so I'll go into 7 that.</p> <p>8 MR. FREDERICK: You may ask foundational 9 questions, but my objection to that is that it assumes 10 the content of the communication, so I believe that it's 11 going beyond the mere foundational question.</p> <p>12 MS. BERKOWER: Okay. But the subject 13 matter of an attorney-client conversation is a 14 permissible foundation question.</p> <p>15 MR. FREDERICK: If you want to ask it 16 again, I'll consider it.</p> <p>17 MS. BERKOWER: Okay.</p> <p>18 Q. (By Ms. Berkower) Do you receive legal advice 19 on election-related matters before the Senate?</p> <p>20 MR. FREDERICK: I will instruct you not to 21 reveal specific substance of any conversation. However, 22 to the extent that you can answer based on general 23 subject matter, you may do so.</p> <p>24 A. I don't remember any communications outside of 25 the testimony that was on the Senate floor and the</p>



<p style="text-align: center;">57</p> <p>1 Committee of the Whole. 2 Q. (By Ms. Berkower) So you did not receive any 3 legal advice on election-related matters before the 4 Senate? 5 MR. FREDERICK: Objection, misstates prior 6 testimony. 7 A. I don't remember. 8 Q. (By Ms. Berkower) You don't remember receiving 9 any such legal advice? 10 A. No. 11 Q. Have you or the Lieutenant Governor ever had 12 discussions with other legislators concerning 13 preclearance? 14 MR. FREDERICK: Again, I'll instruct you 15 not to reveal the substance of a communication. But to 16 the extent this only calls for general subject matter on 17 whether the conversation happened, you may answer. 18 A. We have had some conversations about 19 preclearance. 20 Q. (By Ms. Berkower) Do you remember with who? 21 A. No, but the issue was redistricting, not 22 voting -- voter ID. 23 Q. Do you recall ever speaking with Senator 24 Williams or someone from his office about preclearance 25 of election-related matters?</p>	<p style="text-align: center;">59</p> <p>1 Q. What are the Lieutenant Governor's executive 2 functions? 3 A. Should the Governor be out of state, he assumes 4 the responsibilities of the Governor and -- or 5 incapacitated, I guess, out of state and incapacitated, 6 he would assume the responsibilities of Lieutenant 7 Governor. He serves as the chair of the Senate, and he 8 makes some appointments that's not in the Constitution. 9 Q. So what -- is that all of the Lieutenant 10 Governor's executive functions? 11 A. That the priorities, yeah. 12 Q. What are the Lieutenant Governor's legislative 13 duties? 14 A. Most of his legislative duties stem from the 15 Senate rules and not from the Constitution. The 16 Constitution just says he is President of the 17 Senate. But the Senate rules allow him to refer all 18 bills to committee, to set up committees, to name 19 committee chairs, to determine when bills are heard on 20 the Senate floor subject to the requirements of the 21 Senate rules. 22 Q. Can you explain a little bit more about what 23 you just said about how he determines when bills are 24 heard on the Senate floor? What do you mean by that? 25 A. The Senate rules set out the process for</p>
<p style="text-align: center;">58</p> <p>1 MR. FREDERICK: Same objection and 2 instruction, but you can answer whether the conversation 3 happened. 4 A. I don't -- I don't remember it. 5 Q. (By Ms. Berkower) Are you generally familiar 6 with the Senate rules in effect from sessions between 7 2005 and 2011? 8 A. Generally. 9 Q. Are you generally familiar with the Texas State 10 Constitution? 11 A. No. 12 Q. You know it's long? 13 A. Yes. 14 Q. Are you generally familiar with the parts of 15 the Texas State Constitution that relate to the 16 Lieutenant Governor's responsibilities and duties? 17 A. Yes, generally. 18 Q. Can you describe, in general terms, the 19 difference between the Lieutenant Governor's executive 20 and legislative duties? 21 A. Well, the Lieutenant Governor is a member of 22 the Executive Branch, but at the same time, he serves as 23 President of the Senate. And then the Legislature, the 24 Texas Senate, through their rules, chooses to give him 25 additional legislative powers.</p>	<p style="text-align: center;">60</p> <p>1 hearing bills on the Senate floor. And the senators 2 have chosen to use an alternative system that 3 incorporates the rules in some parts and doesn't in 4 other parts. The senators, before a bill can be heard 5 on the Senate floor, need to have the package of 6 materials, that I referenced earlier, that go with the 7 bill, the actual language of the bill, the fiscal note, 8 the bill analysis, all the pieces that need to be there 9 for the legislative package. So that's subject to the 10 Senate rules. That package has to be together. 11 And if that package is together, the 12 senators then place their bills on the Notice of 13 Intent. The Notice of Intent is sort of outside the 14 rules. It functions as a list of bills that the 15 senators intend to or would like to bring up during the 16 next period of time. The senators have five bills that 17 they can place on Intent each day. At that point, the 18 bill needs to be on that Intent calendar for two days 19 before the Lieutenant Governor can bring it up for 20 hearing. And at that point, he typically asks the 21 senators, "Are you ready to go on your bill? Is it time 22 to be heard?" And the Senator will say yes or no, I'm 23 ready or I'm not ready. Let's wait another day. 24 Q. So with regard to when the bill is brought up 25 for a hearing, does the Lieutenant Governor have</p>



<p style="text-align: center;">61</p> <p>1 discretion as to when it will get brought up? 2 A. Yes. Subject to the materials being prepared 3 that need to be prepared in order for the bill to be 4 ready for hearing. 5 Q. Who makes the final decision about when the 6 bill is ready for a hearing? 7 A. It's a joint decision between the senator and 8 the Lieutenant Governor. The senator asks the 9 Lieutenant Governor to hear the bill, and then the 10 Lieutenant Governor chooses what order they are heard 11 in, once he has received the request. 12 Q. Once the Lieutenant Governor gets the request 13 from the senator, does he have discretion to deny the 14 request? 15 A. Yes. 16 Q. How does that work? 17 A. He doesn't bring it up for hearing, the bill up 18 for hearing. 19 Q. So even if the senator asks for the hearing, 20 the Lieutenant Governor can say no? 21 A. Yes. 22 Q. Does that ever happen? 23 A. It has, I think, yes. 24 Q. When has that happened? 25 A. I don't remember. Sometimes the senators don't</p>	<p style="text-align: center;">63</p> <p>1 Q. Is he required to follow that advice? 2 A. I don't think so. 3 Q. Does the Lieutenant Governor sign all bills and 4 joint resolutions? 5 A. Yes. Typically, after they are finalized, yes. 6 Q. Does he have any discretion in signing those? 7 A. I guess he does, yes. 8 Q. Has he ever not signed a bill or a resolution? 9 A. Not that I'm aware of. 10 Q. When the Senate is meeting in the Committee of 11 the Whole, does the Lieutenant Governor have the right 12 to debate and vote on all questions? 13 A. Yes. 14 Q. What is the Lieutenant Governor's role in the 15 Senate considering a bill on the legislative floor? 16 A. What's that again? 17 Q. Sorry. I got distracted. 18 What is the Lieutenant Governor's rule 19 when the Senate is considering a bill outside of 20 committee? 21 A. On the Senate floor? 22 Q. Yes. 23 A. He presides over the Senate. 24 Q. And what are his powers when he is doing that? 25 A. He can bring up a bill. He can recognize a</p>
<p style="text-align: center;">62</p> <p>1 have sufficient number of votes to suspend the rules in 2 order to hear the bill, and so the Lieutenant Governor 3 will not bring that bill up so that the senator isn't 4 embarrassed. 5 MR. FREDERICK: Risa, we've been going 6 about an hour. When you get to a stopping point, can we 7 take a short break? 8 MS. BERKOWER: Yeah. Sure. Maybe like 9 five minutes or so. 10 Q. (By Ms. Berkower) Can you explain, just give a 11 little more detail what questions of order are and how 12 he rules on them? 13 MR. FREDERICK: Objection, vague. 14 MS. BERKOWER: Sorry. I'll restate that. 15 Q. (By Ms. Berkower) You said that the Lieutenant 16 Governor will rule on questions of order that come up 17 when he is presiding; is that correct? 18 A. I didn't say that, but he can. Points of 19 order, yes. 20 Q. How does he do that? 21 A. He works with the parliamentarian to make a 22 ruling on questions as they come up. 23 Q. So does he receive advice from the 24 parliamentarian? 25 A. Yes.</p>	<p style="text-align: center;">64</p> <p>1 senator or not recognize a senator. He can -- I don't 2 know. He can choose to stop the debate at any time, but 3 it's not a -- I think that about covers what he can do. 4 Q. Has he ever chosen to stop a debate on his own? 5 A. Not that I can think of. 6 Q. Has he ever chosen not to recognize certain 7 senators? 8 A. I can't think of a situation. 9 Q. Is there anything -- can you explain the 10 difference between what the Lieutenant Governor's role 11 is when bills are being considered on the floor and what 12 other senators do when the bill is being considered -- 13 when a bill is being considered on the Senate floor? 14 MR. FREDERICK: Objection, vague. 15 Q. (By Ms. Berkower) Do you understand the 16 question? 17 A. Probably not, but do you want to give it a shot 18 again? 19 Q. Okay. I'll start over. 20 Can the Lieutenant Governor vote and 21 debate on all questions when bills are being considered 22 on the Senate floor? 23 A. No. 24 Q. Why not? 25 A. Because he's presiding over the Senate. He</p>



<p style="text-align: center;">65</p> <p>1 doesn't function as a senator. 2 Q. Can the Lieutenant Governor introduce 3 legislation? 4 A. No. 5 Q. Can he introduce legislation in the Committee 6 of the Whole? 7 A. I've never thought about it. I guess he 8 could. But no, I don't think so, because he would have 9 to file legislation before they're in the Committee of 10 the Whole. So I don't think he could introduce 11 legislation. 12 Q. Can he introduce amendments? 13 A. Yes, I think he could, but I'm not certain. 14 Yeah, I think he could, if he's functioning as a Senator 15 in the Committee of the Whole. 16 Q. So you just said when he's functioning as a 17 senator. 18 A. Well, in a senatorial role in the Committee of 19 the Whole. He would not be able to file legislation at 20 that point, so he would not be able to introduce a new 21 bill, but he might be able to introduce an amendment. I 22 just never thought about it. 23 Q. So has he, to your knowledge, ever introduced 24 an amendment? 25 A. No, he has not.</p>	<p style="text-align: center;">67</p> <p>1 not bound by the rules. 2 Q. (By Ms. Berkower) What types of -- are there 3 specific subject matters that are considered generally 4 by the Committee of the Whole? 5 A. No. 6 Q. So how does the decision get made to refer a 7 bill to the Committee of the Whole? 8 MR. FREDERICK: The same instruction based 9 on privilege. Don't reveal thoughts or mental 10 impressions or communications with staff or 11 legislators. But if you can answer generally without 12 revealing those, you may do so. 13 A. My impression is that the Committee of the 14 Whole is used when the Lieutenant Governor wants to 15 ensure that the entire Senate hears the same 16 information, has the opportunity to question the same 17 witnesses, and has the benefit of hearing the public 18 testimony on an issue. And it's a fairness issue of 19 making sure that everybody hears the same info. 20 Q. (By Ms. Berkower) Is it also fair to say the 21 Lieutenant Governor has a bigger role when the Senate is 22 meeting in the Committee of the Whole? 23 A. No, I don't think that's the case. 24 Q. A bigger role as a legislator even? 25 A. I don't think so. In my opinion, it's more</p>
<p style="text-align: center;">66</p> <p>1 Q. So to make sure I understand, when a bill is 2 filed -- 3 A. Uh-huh. 4 Q. -- that's not something the Lieutenant Governor 5 has the power to do? 6 A. That's correct. 7 Q. Can the Lieutenant Governor introduce 8 amendments to a bill when it's not in the Committee of 9 the Whole? 10 A. No. 11 Q. And the Lieutenant Governor decides when a bill 12 will be referred to the Committee of the Whole; is that 13 correct? 14 A. Yes. 15 Q. In fact, he decides where all bills get sent? 16 A. Yes. 17 Q. How does he make those decisions? 18 MR. FREDERICK: I'll object to the extent 19 that calls for the Lieutenant Governor's thought 20 process, mental impressions, or any communications with 21 his staff or other legislators. 22 If you can answer without revealing any of 23 those matters, you may do so. 24 A. Typically, they're referred by subject matter 25 to the appropriate subject matter committee, but that's</p>	<p style="text-align: center;">68</p> <p>1 powerful to determine when a bill is heard rather than 2 discussing it on the floor. 3 Q. Does the Lieutenant Governor -- 4 MS. BERKOWER: Actually, maybe this is a 5 good place to take break. 6 MR. FREDERICK: Okay. Sure. 7 (Recess from 9:30 a.m. to 9:43 a.m.) 8 Q. (By Ms. Berkower) So I think before we took the 9 break, we were talking about the Lieutenant Governor's 10 role in the Senate. So just to continue on that 11 subject. 12 So the Lieutenant Governor cannot 13 introduce legislation at any time; is that correct? 14 A. That's correct. 15 Q. Does his office develop legislation for other 16 members to introduce? 17 A. We work with the members' staff, yes, to 18 introduce legislation. 19 Q. Do you do original legislative drafting? 20 A. We have, yes. 21 Q. Did you do an original legislative drafting for 22 any of the voter ID laws? 23 A. No. 24 Q. Who did that; do you know? 25 A. I'm assuming the Senator Fraser's office</p>



<p style="text-align: center;">69</p> <p>1 drafted Senate Bill 14, or their -- had it drafted from 2 Leg Council.</p> <p>3 Q. In addition to the ability to introduce 4 legislation, are there other powers that members of the 5 Senate have that the Lieutenant Governor does not have?</p> <p>6 A. Yes.</p> <p>7 Q. What?</p> <p>8 A. The debate on bills. He can't debate a bill on 9 the floor. He can't offer amendments on the floor. He 10 can't vote on the rules, the Senate rules.</p> <p>11 Q. Can he vote on bills outside of the Committee 12 of the Whole unless there's a tie?</p> <p>13 A. Only if there's a tie.</p> <p>14 Q. Since you have been working for Lieutenant 15 Governor Dewhurst, have you assisted with developing 16 legislation?</p> <p>17 A. Yes.</p> <p>18 Q. Describe that process.</p> <p>19 A. It varies by subject matter and by the senators 20 involved. It will run the gamut from me asking, "Do you 21 need help drafting," to, "Here's some concepts we'd like 22 incorporated in a piece of legislation. We had these 23 drafted. Would you be willing to introduce a bill with 24 these concepts in it?" So, and everything in between.</p> <p>25 Q. So when you say that you have a bill -- when</p>	<p style="text-align: center;">71</p> <p>1 the chairs of the committees that typically handle those 2 issues.</p> <p>3 Q. (By Ms. Berkower) Can you explain a little more 4 how your office interacts with the TLC in developing 5 legislation?</p> <p>6 MR. FREDERICK: Objection, vague, but you 7 can answer.</p> <p>8 A. I was going to ask you: What do you mean by 9 that?</p> <p>10 Q. (By Ms. Berkower) Well, do you -- does your 11 office interact with the Texas Legislative Council to 12 develop legislation?</p> <p>13 A. Yes. They are the technical drafters, and so 14 if we ask to have something drafted, we ask them to 15 draft it. And they are the official drafting agency, 16 and then we would share that draft with whoever was 17 planning to carry the legislation associated with that 18 draft.</p> <p>19 Q. So does the TLC work on all drafts then?</p> <p>20 A. Yes. They are supposed to. Occasionally, we 21 have amendments or different pieces of bills that may 22 not be drafted by the Texas Legislative Council. But 23 the bills themselves are supposed to be drafted by the 24 Texas Legislative Council.</p> <p>25 Q. Does the Lieutenant Governor play a role in</p>
<p style="text-align: center;">70</p> <p>1 the Lieutenant Governor asks a senator to introduce a 2 bill with certain concepts in it --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- how far along in the development process is 5 that legislation, generally?</p> <p>6 A. Oh, it can be fully drafted. I mean, we can 7 ask for drafts of bills, and we have. Typically, we 8 don't. It's usually a much more collaborative process, 9 where maybe our staff is an expert on a tax issue, on a 10 school finance bill, and so we have drafted the tax 11 portion of it, but not the school finance portion of 12 it. So typically, it's a collaborative process where 13 everybody divvies up portions of the concept and 14 determines -- they do their part of it.</p> <p>15 Q. How do you decide which senators to work with 16 when you want to introduce legislation?</p> <p>17 MR. FREDERICK: I'll object. I don't 18 think she's asking for privileged matters, but I'll just 19 caution you not to reveal the substance of 20 communications or the thought process about how to work 21 with them. But you can answer if you can do so without 22 revealing that.</p> <p>23 A. Typically, the senators have told Governor 24 Dewhurst various issues that they're interested in, and 25 so he works with the senators on those issues or with</p>	<p style="text-align: center;">72</p> <p>1 deciding who will carry a bill in the Senate?</p> <p>2 A. The senators have complete power over what they 3 carry and what they don't carry, but he has asked 4 senators to carry various pieces of legislation.</p> <p>5 Q. When has he done that?</p> <p>6 A. Oh, I don't know. A variety of times. 7 Sometimes it's necessary to -- and school finance is a 8 perfect example -- to divide up larger areas of 9 legislation or larger issues so that one person isn't 10 carrying the entire package. That's typically done with 11 Sunset bills, so that each member of the Sunset 12 Commission can carry a different Sunset bill, so that's 13 it's not one member carrying all of the bills and having 14 to answer all the questions associated with them.</p> <p>15 Q. What's a Sunset bill?</p> <p>16 A. Oh, sorry.</p> <p>17 Q. That's okay.</p> <p>18 A. We have a statutory process in Texas where 19 every agency is supposed to go through the Sunset 20 process every 12 years. There's a scheduling bill that 21 actually sets forth which agencies go in. But that's 22 too many details for you. 23 The Sunset process, each legislative 24 session designates a series of agencies going through 25 Sunset, which is the process by which the Sunset</p>



<p style="text-align: center;">73</p> <p>1 Commission determines whether or not they should be 2 continued for another 12 years. And right now, I think 3 we have 24 agencies going through the Sunset process. 4 So there has to be legislation next session to continue 5 those agencies or they die. And so Governor Dewhurst 6 works with the commission members to determine who 7 carries what, and typically, that's done by just their 8 interest areas.</p> <p>9 Q. Do you ever oversee research for particular 10 areas of legislation?</p> <p>11 A. Yes.</p> <p>12 Q. When you have done that?</p> <p>13 A. That's part of my job.</p> <p>14 Q. Well, any particular areas?</p> <p>15 A. Every piece of legislation. If we need 16 additional information associated with it, I'll ask the 17 policy person to find it or I'll find it.</p> <p>18 Q. What about for voter ID bills?</p> <p>19 A. I don't remember any additional information 20 that I requested. I know that Bryan Hebert was actively 21 working with Senator Fraser's office to develop whatever 22 background materials they needed.</p> <p>23 Q. And you said that sometimes the senators will 24 come to the Lieutenant Governor and say they're 25 interested in a particular issue.</p>	<p style="text-align: center;">75</p> <p>1 determine if those issues are being developed through 2 legislation by senators, or if we need to develop 3 additional research or drafts on any given issue.</p> <p>4 Q. Was voter ID ever one of the issues that he 5 wanted to establish as a legislative priority?</p> <p>6 MR. FREDERICK: I'll object on the basis 7 it calls for the Lieutenant Governor's mental 8 impressions and thought process, and I instruct you not 9 to answer on the basis of legislative privilege.</p> <p>10 A. Okay. I can't answer that question.</p> <p>11 Q. (By Ms. Berkower) About how many legislative 12 priorities does the Lieutenant Governor have in any 13 given year?</p> <p>14 A. Typically, he withdraws about 20 bills, the 15 lower, the first 20 bills, and those are his priority 16 issue areas.</p> <p>17 Q. How do you ensure that his agenda gets carried 18 out every legislative session?</p> <p>19 A. Through a variety of actions. Sometimes I work 20 with senators. Sometimes I work with the senators' 21 staff. Sometimes it's a process that's happening 22 anyway, and so we just make sure that the process is 23 completed. The typical example of that would be the 24 budget process. There's already a process in place for 25 developing the budget. We just make sure we monitor it</p>
<p style="text-align: center;">74</p> <p>1 A. Yes.</p> <p>2 Q. Did any senator come to the Lieutenant Governor 3 about their interests in voter ID issues?</p> <p>4 MR. FREDERICK: I'll object on the basis 5 of privilege. I believe the question calls for the 6 substance of a privileged communication. I instruct you 7 not to answer on the basis legislative privilege.</p> <p>8 A. Okay. I can't answer that question.</p> <p>9 Q. (By Ms. Berkower) Okay. What about, for the 10 record, immigration issues?</p> <p>11 MR. FREDERICK: Objection, vague. Are you 12 asking if --</p> <p>13 MS. BERKOWER: I'm asking if any senators 14 told the Lieutenant Governor about an interest they had 15 in carrying immigration legislation.</p> <p>16 MR. FREDERICK: The same objection and 17 instruction not to answer on the basis of privilege.</p> <p>18 A. Okay. I can't answer that question.</p> <p>19 Q. (By Ms. Berkower) Okay. Do you ever develop or 20 contribute to the Lieutenant Governor's legislative 21 agenda?</p> <p>22 A. Yes.</p> <p>23 Q. How do you do that?</p> <p>24 A. I ask what he's interested in accomplishing 25 each session, and then I work with our policy staff to</p>	<p style="text-align: center;">76</p> <p>1 and that it incorporates his priorities.</p> <p>2 Q. Is there anything specific that you do to try 3 and get bills passed that are a legislative priority for 4 the Lieutenant Governor?</p> <p>5 MR. FREDERICK: I would object only to the 6 extent that answering would require you to reveal the 7 Lieutenant Governor's thought process or his privileged 8 communications. But to the extent you can answer 9 without doing that, you may.</p> <p>10 A. I mean, again, it's a -- it runs the gamut of 11 talking with the senators, asking them if they have a 12 problem with a given piece of legislation, and if so, if 13 there's something we can do to address that problem. 14 Again, sometimes I meet with their staff to incorporate 15 something that they would like to incorporate in the 16 legislation.</p> <p>17 Q. (By Ms. Berkower) Is there any -- in what ways 18 do you reach out to those other senators?</p> <p>19 A. I go talk to them. Is that what you're asking?</p> <p>20 Q. I guess so.</p> <p>21 A. Okay.</p> <p>22 Q. I guess I'll rephrase it, too.</p> <p>23 Do you ever take efforts to see if certain 24 senators have concerns about a particular bill?</p> <p>25 A. Yes. I'll ask them.</p>



<p style="text-align: center;">77</p> <p>1 Q. Do you ask all 31 senators?</p> <p>2 A. I typically ask the Senator who is carrying the</p> <p>3 piece of legislation if they have 21 votes in order to</p> <p>4 suspend the rules and hear the bill. If they have the</p> <p>5 21 votes, then I don't walk around and ask. Or if we</p> <p>6 feel like the Senator doesn't know whether or not they</p> <p>7 have the 21 votes, then sometimes we will go around and</p> <p>8 ask the senators.</p> <p>9 Q. Something I should have asked you before: Can</p> <p>10 the Lieutenant Governor sit on any committees?</p> <p>11 A. No, not unless it's the Committee of the Whole.</p> <p>12 Q. What is his role with regard to committees</p> <p>13 other than the Committee of the Whole?</p> <p>14 A. He designates the chair of the committees and</p> <p>15 the membership of the committees. The standing</p> <p>16 committees are in the rules, and those standing</p> <p>17 committees have a specific number. They are listed by</p> <p>18 title, and they have a specific number of senators by</p> <p>19 each committee. So long as he abides by that number</p> <p>20 listed in the Senate rules and keeps those committees</p> <p>21 that are listed in the Senate rules, he can put anybody</p> <p>22 he wants to on those committees and as chair of those</p> <p>23 committees.</p> <p>24 Q. But he can't put himself on those committees,</p> <p>25 can he?</p>	<p style="text-align: center;">79</p> <p>1 Q. -- committee?</p> <p>2 A. Yes.</p> <p>3 Q. When does that happen?</p> <p>4 A. Regularly, during session.</p> <p>5 Q. Is there ever a dispute over which committee a</p> <p>6 bill should go to?</p> <p>7 A. Absolutely.</p> <p>8 Q. How are those resolved?</p> <p>9 A. Governor Dewhurst makes up his mind and decides</p> <p>10 which way to send them.</p> <p>11 Q. What factors does he consider?</p> <p>12 MR. FREDERICK: I'll object to the extent</p> <p>13 this calls for the Lieutenant Governor's thought process</p> <p>14 and mental impressions and potentially communications</p> <p>15 within the office. If you can answer generally without</p> <p>16 revealing privileged matters, you may do so.</p> <p>17 A. You know, typically, it's done by</p> <p>18 jurisdiction. But an example would be an economic</p> <p>19 development bill that dealt with pollution control</p> <p>20 equipment. It could go to Natural Resources because it</p> <p>21 deals with pollution control. It could go to Economic</p> <p>22 Development because it's economic development. And so</p> <p>23 he will take whatever factors he takes into account and</p> <p>24 determine whether or not it goes to the Natural</p> <p>25 Resources or Economic Development.</p>
<p style="text-align: center;">78</p> <p>1 A. No, he can't.</p> <p>2 Q. And he can't vote in those committees?</p> <p>3 A. That's correct. Just the Committee of the</p> <p>4 Whole.</p> <p>5 Q. How does he decide who to appoint to different</p> <p>6 committees?</p> <p>7 MR. FREDERICK: I'll object only to the</p> <p>8 extent that it calls for his own thought process.</p> <p>9 But to the extent you can answer without</p> <p>10 revealing that or a privileged communication, you may do</p> <p>11 so.</p> <p>12 A. He asks the senators what committees they want</p> <p>13 to be on.</p> <p>14 Q. (By Ms. Berkower) How does he decide where to</p> <p>15 assign the bills to which committees?</p> <p>16 MR. FREDERICK: Same instruction.</p> <p>17 A. Typically, it follows issue areas. And while</p> <p>18 we don't have specific jurisdiction for committees, like</p> <p>19 they do on the federal level, he has full flexibility to</p> <p>20 send anything anywhere. Typically, we follow the</p> <p>21 unspoken jurisdiction of the committees.</p> <p>22 Q. (By Ms. Berkower) Do the chairs of the</p> <p>23 committees ever make requests to have bills sent to</p> <p>24 their --</p> <p>25 A. Oh, yes.</p>	<p style="text-align: center;">80</p> <p>1 Q. Were there any such disputes with regard to any</p> <p>2 of the voter ID bills?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. Is there any other substantive role that this</p> <p>5 lieutenant governor plays in the Senate that you haven't</p> <p>6 already mentioned?</p> <p>7 A. Okay. There's committees, bills, referrals,</p> <p>8 appointment of conference committees.</p> <p>9 Q. How does that work?</p> <p>10 A. After a bill is heard in one house and then</p> <p>11 sent to the other house, and the other house makes</p> <p>12 changes in that legislation, the senators and the house</p> <p>13 members can choose whether they want to go to conference</p> <p>14 and have conference committees that work out those</p> <p>15 changes so that the two bills match, or -- and that they</p> <p>16 decide on what that should look like, or the originating</p> <p>17 house can choose to concur in the other house's</p> <p>18 amendments, in which case, we don't have to go to</p> <p>19 conference committee, we just accept the changes, and</p> <p>20 the senators then re-vote on that, as do the House</p> <p>21 members, actually.</p> <p>22 If it goes to conference committees, he</p> <p>23 determines the content of the conference committee</p> <p>24 according to the rules; still it needs to have two</p> <p>25 members of the committee of origin of that legislation.</p>



<p style="text-align: center;">81</p> <p>1 So he determines who's on the conference committee, and 2 he determines when he's going to recognize conference 3 committee reports and concurrences. I think that's 4 about it.</p> <p>5 Q. Any other substantive role you haven't 6 discussed yet?</p> <p>7 A. Appointments. He has several appointments he 8 makes. I'd say he makes about 200 appointments.</p> <p>9 Q. Any other substantive role in the Senate?</p> <p>10 A. Not that I can think of.</p> <p>11 Q. And the appointments you're referring to are 12 part of his Executive Branch duties, right?</p> <p>13 A. Yes. Typically.</p> <p>14 Q. Does the Lieutenant Governor engage in public 15 relations?</p> <p>16 A. Well, does he give speeches? Is that what 17 you're asking?</p> <p>18 Q. Does he put out press releases?</p> <p>19 A. Oh, yes. Okay.</p> <p>20 Q. Who is in charge of that in the years actuaries 21 2010 to 2011?</p> <p>22 A. Let's see. 2011, Mike Walz came on. He's our 23 communications director.</p> <p>24 Q. What about in 2010?</p> <p>25 A. I think Rich Parsons was.</p>	<p style="text-align: center;">83</p> <p>1 Q. What is it?</p> <p>2 A. I'm aware that it exists. That's about as far 3 as I am aware. I have not been an ALEC meeting. It's a 4 legislative conference of -- it's a conference on the -- 5 on the national level of legislative -- that legislative 6 staff and legislators can attend. They put on 7 conferences. They prepare briefing materials.</p> <p>8 Q. Do you know if any other members or staff of 9 the Lieutenant Governor's Office are members of ALEC?</p> <p>10 A. I'm not aware of anyone.</p> <p>11 Q. What about members of the Texas Legislature?</p> <p>12 MR. FREDERICK: Objection, vague.</p> <p>13 Q. (By Ms. Berkower) Do you know of any --</p> <p>14 A. Are they members of ALEC?</p> <p>15 Q. Yes.</p> <p>16 A. I don't -- I don't know.</p> <p>17 Q. Did you ever receive -- did your office ever 18 receive any documents from ALEC related to voter ID?</p> <p>19 A. I don't remember voter ID. We do receive 20 documents from them from time to time.</p> <p>21 Q. Did ALEC offer you any technical assistance on 22 voter ID legislation?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Did you solicit any such assistance yourself 25 from ALEC?</p>
<p style="text-align: center;">82</p> <p>1 Q. Does the Lieutenant Governor communicate with 2 any interest groups?</p> <p>3 A. Oh, sure. Yes.</p> <p>4 Q. Who was in charge of that in 2010 and 2011?</p> <p>5 A. Well, he is. People send in meeting requests, 6 that he meets with them according to his schedule.</p> <p>7 Q. Who did he meet with during that time, what 8 interest groups?</p> <p>9 A. Oh, probably thousands of them. Honestly, over 10 -- well over hundreds.</p> <p>11 Q. Did he meet with any relating specifically to 12 voter ID?</p> <p>13 A. I don't remember, but I would imagine so.</p> <p>14 Q. So you don't remember any particular interest 15 groups that he met with about voter ID?</p> <p>16 A. I want to say he met with MALDEF, but I don't 17 remember.</p> <p>18 Q. Any others?</p> <p>19 A. Maybe NAACP was in with MALDEF, but I don't 20 remember.</p> <p>21 Q. Did you attend that meeting?</p> <p>22 A. I don't remember.</p> <p>23 Q. Are you familiar with the group the American 24 Legislative Exchange Council, or ALEC?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">84</p> <p>1 A. No.</p> <p>2 Q. Are you familiar with the National Conference 3 of State Legislators?</p> <p>4 A. Yes, I am.</p> <p>5 Q. Have you attended any meetings?</p> <p>6 A. Yes, I have. It's been a while, but yes.</p> <p>7 Q. Do you remember when it was, though?</p> <p>8 A. Oh, let's say -- I would say I've probably been 9 to five of their conferences in the '90s, and one of 10 their drafting conferences and also in the 1990s. And I 11 have not to be an NCSL conference since the Lieutenant 12 Governor was elected in 2003.</p> <p>13 Q. Are there any other groups that focus on policy 14 advice or assistance to legislators that you belong to?</p> <p>15 A. I don't know if we pay the Council of State 16 Governments and the Southern Legislative Conference, but 17 both of them provide research materials, but I don't 18 know if we pay in to those.</p> <p>19 Q. Did you receive any research materials from 20 either of those groups with regard to voter ID?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. Do you know, what is Texas's current system for 23 determining how to verify the identity -- excuse me -- 24 verify the identity of a voter?</p> <p>25 A. I mean, the current law before the voter ID</p>



<p style="text-align: center;">85</p> <p>1 legislation?</p> <p>2 Q. Yes.</p> <p>3 A. Like what we're under right now?</p> <p>4 Q. Yes.</p> <p>5 A. I mean, you have to register to vote, and</p> <p>6 beyond that, as long as you show up with your voter</p> <p>7 registration card, you can vote.</p> <p>8 Q. What happens, do you know, if the voter shows</p> <p>9 up without their certificate?</p> <p>10 A. I do that all of time. And so I used my</p> <p>11 driver's license, and then I have to swear that I am me,</p> <p>12 and then I am registered. They check my name and</p> <p>13 address against a voter registration roll. And I have</p> <p>14 to swear that I am me and that I am from that location.</p> <p>15 Q. Are there problems with the system, in your</p> <p>16 view?</p> <p>17 A. I think it's not the most secure system we</p> <p>18 could have.</p> <p>19 Q. Why not?</p> <p>20 A. Because there's no photo identification</p> <p>21 associated with it.</p> <p>22 Q. You mean the person could show up just with the</p> <p>23 voter registration certificate, and that would be</p> <p>24 enough?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">87</p> <p>1 Q. (By Ms. Berkower) Has it failed, though, in</p> <p>2 your view?</p> <p>3 A. I believe there's been some testimony on voter</p> <p>4 fraud, yes. But I have no personal experience with it.</p> <p>5 Q. Do you know of convictions for voter fraud that</p> <p>6 have been -- any recent convictions for voter fraud?</p> <p>7 A. I think there have been some in South Texas,</p> <p>8 but I am not certain about that.</p> <p>9 Q. Were those for in-person impersonation?</p> <p>10 A. I'm just -- I don't remember.</p> <p>11 Q. Were they for mail fraud? Sorry. Mail-in</p> <p>12 voter fraud?</p> <p>13 A. I know there were some for mail-in voter</p> <p>14 fraud. I'm not certain whether or not there were some</p> <p>15 from -- and it seems to me Harris County had some as</p> <p>16 well, some issues with voter fraud.</p> <p>17 Q. So aside from the problems with the current</p> <p>18 system of verifying a voter's identity that you've</p> <p>19 already identified, are there any other problems that</p> <p>20 you know of with the current system?</p> <p>21 A. Well, I think more people should vote. There's</p> <p>22 a lot of voter apathy, but that's not really what we're</p> <p>23 here to talk about.</p> <p>24 Q. What was the original impetus for voter ID in</p> <p>25 Texas, given the law that's already in place?</p>
<p style="text-align: center;">86</p> <p>1 Q. Any other problems with the current system?</p> <p>2 A. I think you can show up with your electric</p> <p>3 bill, and you don't have to even show up with a driver's</p> <p>4 license, and then swear that you are you and that you</p> <p>5 you're the person on the voter ID roll.</p> <p>6 Q. And that's a problem with the current system,</p> <p>7 in your view?</p> <p>8 A. I think it is. If you've got three Bill Jones,</p> <p>9 how do you know which one it is?</p> <p>10 Q. I'm sorry; what?</p> <p>11 A. If you've got three people showing up, and they</p> <p>12 say, "I'm Bill Jones," how do you know which Bill Jones</p> <p>13 it is, if you don't have some kind of photo reference to</p> <p>14 the person?</p> <p>15 Q. I think we talk about bills so much, in my</p> <p>16 mind, it's all under a name.</p> <p>17 A. Oh, I'm sorry. William Jones, okay?</p> <p>18 Q. I understand. Okay.</p> <p>19 A. I'm sorry.</p> <p>20 Q. In your view, has the system failed to prevent</p> <p>21 in-person voter fraud?</p> <p>22 MR. FREDERICK: Objection, relevance. You</p> <p>23 may answer.</p> <p>24 A. In my opinion, it's not very safe. I mean, not</p> <p>25 secure.</p>	<p style="text-align: center;">88</p> <p>1 MR. FREDERICK: Object on the basis of</p> <p>2 privilege to the extent this calls for the Lieutenant</p> <p>3 Governor's thought process or mental impressions or any</p> <p>4 communications in the office or that he or his staff had</p> <p>5 with other legislators, state agencies, the Texas</p> <p>6 Legislative Council or constituents. If you can answer</p> <p>7 without revealing those matters, you may do so.</p> <p>8 A. If you're asking me the purpose of a voter ID</p> <p>9 bill, it would be to protect the integrity of the voting</p> <p>10 system and reduce the opportunity for voter fraud.</p> <p>11 Q. (By Ms. Berkower) I think I mean more just the</p> <p>12 original impetus. Was there a rash of problems that</p> <p>13 were made public? Were there certain convictions? Was</p> <p>14 there a public outcry? Anything of that nature.</p> <p>15 MR. FREDERICK: The same instruction, but</p> <p>16 you may answer subject to that.</p> <p>17 A. My memory is, there was a real sense that part</p> <p>18 of the voter apathy was lack of voter confidence in the</p> <p>19 system. And so I think to the extent that the</p> <p>20 Legislature was considering improving the election</p> <p>21 process by protecting its integrity, it would increase</p> <p>22 voting by making people feel better about it.</p> <p>23 Q. (By Ms. Berkower) Why do you think people</p> <p>24 didn't believe the system was secure enough?</p> <p>25 MR. FREDERICK: Objection, calls for</p>



<p style="text-align: center;">89</p> <p>1 speculation, but you may answer.</p> <p>2 A. I think that's speculative, but I have to</p> <p>3 present my driver's license to write a check, so I don't</p> <p>4 think it's too much to ask people to have an ID in order</p> <p>5 to vote.</p> <p>6 Q. (By Ms. Berkower) But do you think that the</p> <p>7 fact that you don't currently need an ID to vote erodes</p> <p>8 confidence in the system?</p> <p>9 MR. FREDERICK: Objection, relevance, but</p> <p>10 you may answer.</p> <p>11 A. Personally, I think so, yes.</p> <p>12 Q. (By Ms. Berkower) Was there any study or</p> <p>13 analysis that you know of that showed voting apathy was</p> <p>14 linked to a lack of confidence in the system for this</p> <p>15 reason, the reasons you identified?</p> <p>16 A. I want to say there was, but I don't remember.</p> <p>17 I really don't remember.</p> <p>18 Q. When was Senate Bill 14 signed into law?</p> <p>19 A. Governor Perry signed it, I think, late May of</p> <p>20 2011.</p> <p>21 Q. Have there been elections held in Texas since</p> <p>22 the law was signed in May of 2011?</p> <p>23 A. Oh, yeah. One a day.</p> <p>24 Q. Was SB 14 enforced in those elections?</p> <p>25 A. No.</p>	<p style="text-align: center;">91</p> <p>1 Q. Okay. Well, yeah, I'll ask you specific</p> <p>2 questions about it.</p> <p>3 So first, just as a general matter, do you</p> <p>4 know what this is?</p> <p>5 A. Yes, it's a --</p> <p>6 Q. What is it?</p> <p>7 A. -- a voter ID bill.</p> <p>8 Q. Which one is it?</p> <p>9 A. House Bill 1706.</p> <p>10 Q. Do you know who sponsored it?</p> <p>11 A. Well, it says -- oh, who sponsored it? I think</p> <p>12 it was Fraser.</p> <p>13 Q. I guess --</p> <p>14 A. They authored it as Denny, Pitts, Woolley,</p> <p>15 Nixon, Bohac, and others.</p> <p>16 Q. Okay. Are you familiar with the forms of</p> <p>17 allowable ID under Senate Bill 14?</p> <p>18 A. Yes.</p> <p>19 Q. What are they?</p> <p>20 A. There's roughly five of them. DPS ID, driver's</p> <p>21 license, an election certificate, a military ID, a</p> <p>22 concealed carry license, a passport, and a citizenship</p> <p>23 certificate, whatever that is.</p> <p>24 Q. So if you turn to Page 4 of this exhibit.</p> <p>25 A. Uh-huh.</p>
<p style="text-align: center;">90</p> <p>1 Q. Are you aware of any in-person voter fraud that</p> <p>2 occurred in any of the elections held since the bill was</p> <p>3 signed?</p> <p>4 A. Not personally.</p> <p>5 Q. Was there a time when a voter ID was first</p> <p>6 introduced into the Texas Legislature?</p> <p>7 MR. FREDERICK: Objection, vague, but you</p> <p>8 can answer.</p> <p>9 Q. (By Ms. Berkower) In 2005. How about that?</p> <p>10 A. Oh, yeah. Well, I know one was introduced in</p> <p>11 '5 and '7 and '9 and '11, so...</p> <p>12 Q. Do you remember which bill was introduced in</p> <p>13 2005?</p> <p>14 A. It was a House Bill, 1706. It's on this, right</p> <p>15 here (indicating).</p> <p>16 Q. It was indeed 1706. I have what I think we've</p> <p>17 previously marked as Exhibit 44 in prior depositions.</p> <p>18 (Exhibit 44 remarked for this deposition.)</p> <p>19 Q. (By Ms. Berkower) Do you recognize this?</p> <p>20 A. I don't remember this bill at all. I know we</p> <p>21 got it late in the session, but I just don't -- I</p> <p>22 haven't reread it.</p> <p>23 Q. Do you want to take a quick look at it?</p> <p>24 A. I feel like I'm wasting your time by reading</p> <p>25 the whole thing. Do you want to ask a question?</p>	<p style="text-align: center;">92</p> <p>1 Q. And you see the Section 63.0101, Documentation</p> <p>2 of Proof of Identification, is this the section of the</p> <p>3 bill that lists the forms of allowable ID?</p> <p>4 A. It is for this bill, yes.</p> <p>5 Q. For this bill. Under this bill, are the forms</p> <p>6 of allowable ID different from those under Senate Bill</p> <p>7 14?</p> <p>8 A. Yes.</p> <p>9 Q. How are they different?</p> <p>10 A. It allows a student ID, an ID issued by an</p> <p>11 employer of the person in ordinary course of business --</p> <p>12 or somebody's business, an ID card issued by the state</p> <p>13 agency, and a county election administrator ID. I</p> <p>14 believe that's all of them.</p> <p>15 Q. Does it permit a driver's license that had</p> <p>16 expired within the last two years?</p> <p>17 A. Oh, yes, uh-huh.</p> <p>18 Q. And does it also permit a voter to present two</p> <p>19 forms of nonphoto ID to vote? I think that may be on</p> <p>20 Page 5 towards the bottom.</p> <p>21 A. Yes, I see it. Uh-huh, yes.</p> <p>22 Q. As to any of these forms of identification, do</p> <p>23 you know the purpose in including those forms of ID in</p> <p>24 House Bill 1706?</p> <p>25 A. No, I don't.</p>



<p style="text-align: center;">93</p> <p>1 Q. Do you know why nonphoto ID was included? 2 MR. FREDERICK: Object. Object to that 3 question on the basis of relevance and privilege to the 4 extent it calls for anyone's thought process for 5 including anything, it's privileged. But if you can 6 answer without revealing that, you can do so. 7 A. I don't. I don't remember this bill. 8 Q. (By Ms. Berkower) Do you know if nonphoto ID 9 was included out of concern for Section 5 preclearance? 10 A. I don't. 11 Q. Were you or anyone in the Lieutenant Governor's 12 office involved in the development or drafting of this 13 bill? 14 A. Not that I'm aware of, no. 15 Q. Are you aware of any communications related to 16 the drafting or development of this bill? 17 A. No. We did refer to it to committee, but 18 that's it. 19 Q. Are you aware of the source of any of the 20 legislative language in this bill? 21 A. No. 22 Q. Do you remember anything about the legislators' 23 consideration of this bill after it was filed? I'm 24 sorry, the Senate's consideration of this bill after it 25 was filed?</p>	<p style="text-align: center;">95</p> <p>1 right? 2 A. That's correct. 3 Q. Can he call meetings of the State Affairs 4 Committee? 5 A. No, he can't. 6 Q. He can't preside over it either, can he? 7 A. No. 8 Q. And he can't introduce amendments either? 9 A. That's correct? 10 Q. So when the bill is in the State Affairs 11 Committee, what is the role of Lieutenant Governor? 12 A. There's not a role. 13 Q. Why did the Senate State Affairs -- well, do 14 you remember what happened to it when it went to the 15 State Affairs Committee? 16 A. No. I'm sorry. 17 Q. Actually, I can help you with that. I think I 18 have what we can mark as -- and this is where it gets a 19 little tricky -- 101. 20 (Exhibit 101 marked for identification.) 21 A. Look at that. It did come in May. 22 Q. (By Ms. Berkower) So now, after looking at this 23 exhibit, do you remember what happened to the bill? 24 A. No, I really don't. 25 Q. Well, if you look at the history, does it look</p>
<p style="text-align: center;">94</p> <p>1 A. I know that we got it late in the session. It 2 was in May, and we referred it to the Senate State 3 Affairs Committee. And beyond that, I don't remember 4 anything else. 5 Q. Why was it referred to the Senate State Affairs 6 Committee and not the Committee of the Whole? 7 MR. FREDERICK: Object to the extent that 8 it calls for thought process or mental impressions of 9 the Lieutenant Governor or his staff or any 10 communications with legislators or state agencies. 11 I would instruct you not to answer on the 12 basis of privilege. However, if you can answer without 13 revealing privileged matters, you may do so. 14 A. I don't remember discussions of this bill, but 15 typically, elections bills go to the Senate State 16 Affairs Committee. 17 Q. (By Ms. Berkower) Why is it that they typically 18 go to the State Affairs Committee? 19 A. Because Governor Dewhurst has determined that 20 that's where he will send election bills. 21 Q. And he made decision to assign the bill to the 22 State Affairs Committee? 23 A. Yes. 24 Q. When the bill is in the State Affairs 25 Committee, the Lieutenant Governor can't vote on it,</p>	<p style="text-align: center;">96</p> <p>1 like it ever made it out of the State Affairs Committee? 2 A. No, it did not. 3 Q. Do you know why the State Affairs Committee did 4 not move the bill? 5 A. No, I do not. 6 Q. Is it possible it was too late in the session? 7 A. It is possible. 8 Q. Do you know if the Lieutenant Governor took a 9 public position on HB 1706? 10 A. Not that I remember. 11 Q. Did the Lieutenant Governor or anyone in his 12 office have any communications with anybody about 13 HB 1706? 14 A. He would have referred it to the committee, but 15 other than that, no, I'm not aware of any. 16 Q. Are you aware of any analysis conducted by the 17 Lieutenant Governor's office concerning HB 1706? 18 A. No. 19 MR. FREDERICK: Object on the basis of 20 privilege. 21 To the extent you can answer yes or no, 22 you can answer. 23 A. No, I'm not aware of any. 24 Q. (By Ms. Berkower) Are you aware of any analysis 25 conducted by anyone in the Legislature related to HB</p>



<p style="text-align: center;">97</p> <p>1 1706?</p> <p>2 MR. FREDERICK: The same instruction.</p> <p>3 A. I'm sure that the House conducted their own</p> <p>4 research and put together their own briefing materials,</p> <p>5 but I'm not aware of that, of those materials.</p> <p>6 Q. (By Ms. Berkower) Are you aware of any attempt</p> <p>7 to determine who among registered voters did not possess</p> <p>8 the forms of identification required by HB 1706?</p> <p>9 MR. FREDERICK: I'll object on the basis</p> <p>10 of privilege to the extent it calls for communications</p> <p>11 or thought processes of the Lieutenant Governor. But to</p> <p>12 the extent it calls for a yes or a no answer of what you</p> <p>13 were aware of, you may answer it.</p> <p>14 A. I'm not aware of it.</p> <p>15 Q. (By Ms. Berkower) Are you aware of any attempt</p> <p>16 to determine the impact of HB 170 on minority voters?</p> <p>17 MR. FREDERICK: The same objection and</p> <p>18 instruction.</p> <p>19 A. I'm not aware of it.</p> <p>20 Q. (By Ms. Berkower) Sitting here today, do you</p> <p>21 have an opinion on this bill?</p> <p>22 MR. FREDERICK: Objection, relevance.</p> <p>23 Objection, vague.</p> <p>24 A. Not really.</p> <p>25 Q. (By Ms. Berkower) Do you know what the purpose</p>	<p style="text-align: center;">99</p> <p>1 A. Personally, I think we live in a society where</p> <p>2 the accepted identification process is a photo ID, and I</p> <p>3 think that -- I mean, for everything like boarding an</p> <p>4 airplane or writing a check, you have to have a photo</p> <p>5 ID. So, I don't think it's too much to ask to have a</p> <p>6 photo ID to vote.</p> <p>7 Q. (By Ms. Berkower) Is it a fundamental right to</p> <p>8 board a plane?</p> <p>9 A. No.</p> <p>10 Q. Is it fundamental right to write a check?</p> <p>11 MR. FREDERICK: Objection, it calls for a</p> <p>12 conclusion. You can answer if you know the answer.</p> <p>13 A. I don't think so.</p> <p>14 Q. (By Ms. Berkower) Do you know of any other</p> <p>15 fundamental rights that require photo ID?</p> <p>16 MR. FREDERICK: Objection. It calls for</p> <p>17 speculation. It calls for a legal conclusion and</p> <p>18 relevance.</p> <p>19 You may answer if you can.</p> <p>20 A. I'm not aware of any.</p> <p>21 Q. (By Ms. Berkower) Is voting a fundamental</p> <p>22 right?</p> <p>23 MR. FREDERICK: Objection, it calls for a</p> <p>24 legal opinion or conclusion.</p> <p>25 You may answer.</p>
<p style="text-align: center;">98</p> <p>1 of the bill's authors were in introducing HB 1706?</p> <p>2 A. No.</p> <p>3 Q. In your view, as someone knowledgeable about</p> <p>4 voter ID, would this bill, if enacted today, have</p> <p>5 accomplished the purposes that you identified earlier as</p> <p>6 -- actually, I'll start that question over.</p> <p>7 In your view, as someone with knowledge on</p> <p>8 voter ID, would this bill have improved public</p> <p>9 confidence in elections?</p> <p>10 MR. FREDERICK: Objection. It calls for</p> <p>11 speculation.</p> <p>12 A. I think it would have improved the current</p> <p>13 system, but it doesn't improve it to the level that</p> <p>14 Senate Bill 14 does.</p> <p>15 Q. (By Ms. Berkower) Why not?</p> <p>16 A. Because it's not a totally photo ID bill.</p> <p>17 There's no way of checking to see if your Bill or</p> <p>18 William Jones is the same person.</p> <p>19 Q. How does the narrowing of the forms of ID</p> <p>20 further public confidence in elections?</p> <p>21 MR. FREDERICK: Object only to the extent</p> <p>22 this calls for you to reveal the thoughts processes of</p> <p>23 the Lieutenant Governor or any privileged</p> <p>24 communications. To the extent this is seeking your</p> <p>25 knowledge only, you may answer if you can.</p>	<p style="text-align: center;">100</p> <p>1 A. I think -- I think in a democracy, it is.</p> <p>2 Q. (By Ms. Berkower) And not in other forms of</p> <p>3 government?</p> <p>4 A. Well, if you're a Communist, you're not</p> <p>5 really. I mean it's a different social structure.</p> <p>6 Q. I guess I mean under the U.S. Constitution, is</p> <p>7 voting a fundamental right?</p> <p>8 MR. FREDERICK: The same objection.</p> <p>9 You may answer, if you can.</p> <p>10 A. From my personal opinion, it is.</p> <p>11 Q. (By Ms. Berkower) Do you know if there was a</p> <p>12 photo ID bill introduced in the next legislative session</p> <p>13 in 2007?</p> <p>14 A. Yes, there was.</p> <p>15 Q. Do you remember which one it was?</p> <p>16 A. That House Bill 218.</p> <p>17 Q. Yes. I have an exhibit to prove it.</p> <p>18 MS. BERKOWER: We'll mark this -- this was</p> <p>19 actually Exhibit 28 from a previous deposition.</p> <p>20 (Exhibit 28 remarked for this deposition.)</p> <p>21 MS. BERKOWER: Matt, do you have enough</p> <p>22 copies of that now?</p> <p>23 MR. FREDERICK: Yeah. My records</p> <p>24 retention policy is very strict on these.</p> <p>25 MS. BERKOWER: (Laughing) Okay.</p>



<p style="text-align: center;">101</p> <p>1 Q. (By Ms. Berkower) Do you recognize this?</p> <p>2 A. Yeah. I didn't read this in preparation of</p> <p>3 today's meeting, no.</p> <p>4 Q. Just from looking at it now, do you know what</p> <p>5 it is?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's a voter ID bill from 2007, House Bill 218</p> <p>9 by Brown of Kaufman, Berman, Bohac, Riddle and others.</p> <p>10 Q. Are you familiar with its provisions?</p> <p>11 A. Only superficially, but not really.</p> <p>12 Q. Did I give you the wrong version?</p> <p>13 A. Do you want to look at this one?</p> <p>14 Q. I'm going to direct you to a certain page in a</p> <p>15 second. So turning to Page 9 of the exhibit, does it</p> <p>16 appear that HB 218, for the most part, follows HB 1706</p> <p>17 with regard to the acceptable forms of ID for voting?</p> <p>18 MR. FREDERICK: To ask if you -- have you</p> <p>19 specified what version of HB 218 this is?</p> <p>20 MS. BERKOWER: I thought -- have I?</p> <p>21 MR. FREDERICK: I mean, do we know?</p> <p>22 MS. BERKOWER: I think this is the final</p> <p>23 version that was -- oh, can we go off the record for a</p> <p>24 second?</p> <p>25 (Brief discussion off the record.)</p>	<p style="text-align: center;">103</p> <p>1 MR. FREDERICK: I also object on the basis</p> <p>2 of legislation privilege.</p> <p>3 To the extent this calls for</p> <p>4 communications between you and another staff member</p> <p>5 about pending legislation, I would instruct you not to</p> <p>6 answer the question on the basis of privilege.</p> <p>7 THE WITNESS: So don't answer it at all?</p> <p>8 MR. FREDERICK: Yeah. I instruct you not</p> <p>9 to answer the question.</p> <p>10 THE WITNESS: Okay.</p> <p>11 Q. (By Ms. Berkower) So you're going to follow --</p> <p>12 A. Yeah.</p> <p>13 Q. Do you remember if you believed it impacted the</p> <p>14 states' ability to craft voter -- photo ID laws?</p> <p>15 MR. FREDERICK: Objection, relevance.</p> <p>16 A. I don't remember.</p> <p>17 Q. (By Ms. Berkower) Did you that believe it</p> <p>18 impacted the states' ability to obtain preclearance of a</p> <p>19 voter ID law?</p> <p>20 MR. FREDERICK: Objection, relevance.</p> <p>21 A. I don't remember.</p> <p>22 Q. (By Ms. Berkower) Are you aware of any</p> <p>23 communications between the Lieutenant Governor's Office</p> <p>24 and officials in Indiana regarding its photo ID law or</p> <p>25 the Crawford decision?</p>
<p style="text-align: center;">102</p> <p>1 Q. (By Ms. Berkower) Are you familiar with the</p> <p>2 Supreme Court's decision in Crawford versus Marion</p> <p>3 County Board of Elections?</p> <p>4 A. No, I'm not familiar with that.</p> <p>5 Q. Do you remember the Supreme Court issuing a</p> <p>6 decision about voter ID?</p> <p>7 A. Yes. I seem to remember they did.</p> <p>8 Q. Do you remember which states voter ID law was</p> <p>9 at issue?</p> <p>10 A. Was it Georgia?</p> <p>11 Q. It may have been Indiana?</p> <p>12 A. Was it Indiana? Okay.</p> <p>13 Q. Do you remember when the opinion was issued?</p> <p>14 A. No, I don't.</p> <p>15 Q. Do you remember discussing it with anybody?</p> <p>16 A. Yes. I know that I did with Bryan Hebert.</p> <p>17 Q. Anybody else?</p> <p>18 A. He provided that information to Governor</p> <p>19 Dewhurst, so I may have said -- I put information on his</p> <p>20 FYI list, so...</p> <p>21 Q. What did he tell you about it?</p> <p>22 A. My memory is --</p> <p>23 MR. FREDERICK: Objection, vague.</p> <p>24 Q. (By Ms. Berkower) What did Bryan Hebert tell</p> <p>25 you about the Supreme Court decision?</p>	<p style="text-align: center;">104</p> <p>1 A. When we had the testimony on Senate Bill 14,</p> <p>2 someone from Indiana was asked to come and provide</p> <p>3 testimony to the Committee on the Whole. I don't</p> <p>4 remember that person's name. But someone came from</p> <p>5 Indiana. So it was after the fact, not as a result of</p> <p>6 the fact case.</p> <p>7 Q. Are you aware of any communications between the</p> <p>8 Lieutenant Governor's Office and officials in Indiana</p> <p>9 regarding the burden imposed on Indiana voters by their</p> <p>10 voter ID law?</p> <p>11 A. Not outside of requesting their expert</p> <p>12 testimony for the hearing of the Committee of the Whole</p> <p>13 on Senate Bill 14.</p> <p>14 Q. After the Crawford decision was issued, did you</p> <p>15 discuss plans to introduce subsequent voter ID</p> <p>16 legislation?</p> <p>17 MR. FREDERICK: Objection, vague. Also</p> <p>18 object to the extent it's asking about communications</p> <p>19 between the Lieutenant Governor, his staff, or other</p> <p>20 legislators.</p> <p>21 I instruct you not to answer on the basis</p> <p>22 of privilege.</p> <p>23 THE WITNESS: Okay.</p> <p>24 MR. FREDERICK: But it's not -- I would</p> <p>25 object as vague because it's not clear with whom the</p>



<p>105</p> <p>1 conversations occurred.</p> <p>2 MS. BERKOWER: I'll rephrase the question.</p> <p>3 Q. (By Ms. Berkower) After the Crawford decision</p> <p>4 was issued, did you discuss plans to introduce</p> <p>5 subsequent voter ID legislation with anyone in the</p> <p>6 Lieutenant Governor's Office?</p> <p>7 MR. FREDERICK: Object on the basis of</p> <p>8 legislative privilege, and instruct you not to answer.</p> <p>9 A. Okay. I won't answer that, then.</p> <p>10 Q. (By Ms. Berkower) Did you discuss plans to</p> <p>11 introduce subsequent voter ID legislation with the</p> <p>12 Lieutenant Governor after the Crawford decision?</p> <p>13 MR. FREDERICK: Objection, legislative</p> <p>14 privilege. Instruct you not to answer.</p> <p>15 A. Okay. I won't answer that.</p> <p>16 Q. (By Ms. Berkower) Did you discuss plans to</p> <p>17 introduce subsequent voter ID legislation after the</p> <p>18 Crawford decision with other legislators or their staff?</p> <p>19 MR. FREDERICK: Objection, legislative</p> <p>20 privilege. Instruct you not to answer.</p> <p>21 A. I won't answer that then.</p> <p>22 Q. (By Ms. Berkower) After the 2007 legislative</p> <p>23 session, do you remember if there is discussion of an</p> <p>24 interim charge on voter ID?</p> <p>25 A. I think we did have one during that interim. I</p>	<p>107</p> <p>1 Q. (By Ms. Berkower) Do you know if the Governor</p> <p>2 was in favor of having an interim charge for voter ID?</p> <p>3 MR. FREDERICK: Objection, legislative</p> <p>4 privilege. I instruct you not to answer.</p> <p>5 MS. BERKOWER: I just asked if she knew if</p> <p>6 the Governor was in favor. I didn't ask whether he was</p> <p>7 or not.</p> <p>8 MR. FREDERICK: If you can ask it again,</p> <p>9 I'll permit the yes-or-no answer.</p> <p>10 Q. (By Ms. Berkower) Do you know if the Governor</p> <p>11 -- wait. Can you repeat that back, what I asked before?</p> <p>12 Oh, I know. I can ask myself.</p> <p>13 Do you know if the Governor was in favor</p> <p>14 of having an interim charge for voter ID?</p> <p>15 MR. FREDERICK: Objection on the basis of --</p> <p>16 A. No, I don't know.</p> <p>17 Q. (By Ms. Berkower) Do you know if the Lieutenant</p> <p>18 Governor was in favor of having an interim charge for</p> <p>19 voter ID?</p> <p>20 MR. FREDERICK: The same objection. You</p> <p>21 may answer whether or not you knew.</p> <p>22 A. At one point, he wanted to have a charge,</p> <p>23 because he issued a charge. I just don't remember if it</p> <p>24 was in 2000 -- after the 2007 session or after the 2009</p> <p>25 session.</p>
<p>106</p> <p>1 know we've had at least one interim charge on voter ID.</p> <p>2 I just don't remember if it was after the 2007 session</p> <p>3 or after the 2009 session.</p> <p>4 Q. And can you explain just quickly what an</p> <p>5 interim charge is?</p> <p>6 A. Yes. The Lieutenant Governor sends out</p> <p>7 instructions to committees for their research during the</p> <p>8 interim in preparation of legislation. Sometimes it's</p> <p>9 in preparation of legislation. Sometimes it just is an</p> <p>10 issue that needs to be discussed for the state as a</p> <p>11 whole.</p> <p>12 Q. So the interim charge goes to a particular</p> <p>13 committee then?</p> <p>14 A. Yes.</p> <p>15 Q. Which committee did it go to for purposes of</p> <p>16 voter ID?</p> <p>17 A. I just don't remember which interim it was, but</p> <p>18 it would have gone to State Affairs.</p> <p>19 Q. Who was in favor of having an interim charge</p> <p>20 for voter ID?</p> <p>21 MR. FREDERICK: Objection. To the extent</p> <p>22 it calls for mental impressions of the Lieutenant</p> <p>23 Governor or any legislator, I instruct you not to answer</p> <p>24 on the basis of privilege.</p> <p>25 A. Okay. I can't answer that, then.</p>	<p>108</p> <p>1 Q. (By Ms. Berkower) And do you know if the</p> <p>2 Lieutenant Governor was in favor of having the charge?</p> <p>3 MR. FREDERICK: The same objection, but</p> <p>4 you may answer the specific question.</p> <p>5 A. He wouldn't issue the charge if he didn't</p> <p>6 believe it should be studied.</p> <p>7 Q. (By Ms. Berkower) And the Lieutenant Governor</p> <p>8 issues the charge?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you know why an interim charge was</p> <p>11 issued for voter ID?</p> <p>12 MR. FREDERICK: Objection. It calls for</p> <p>13 legislative privilege matters, and I instruct you not to</p> <p>14 answer.</p> <p>15 A. Okay. I can't answer that.</p> <p>16 MS. BERKOWER: To be clear, I just asked</p> <p>17 if she knew why, not why.</p> <p>18 Q. (By Ms. Berkower) Do you know why an interim</p> <p>19 charge was considered for voter ID?</p> <p>20 MR. FREDERICK: I'll object on the basis</p> <p>21 of privilege and instruct you that you may answer the</p> <p>22 specific question whether or not you know why, but do</p> <p>23 not reveal anyone's thought process or communications as</p> <p>24 to why.</p> <p>25 A. Yes. I know why.</p>



<p style="text-align: center;">109</p> <p>1 Q. (By Ms. Berkower) Can you say why? 2 MR. FREDERICK: Objection, legislative 3 privilege. 4 Instruct you not to answer the question. 5 A. No. 6 Q. (By Ms. Berkower) And to be clear, the case I 7 was referring to, the Supreme Court case on the Indiana 8 voter ID law, the citation for that is 553 U.S. 181. 9 A. Okay. 10 Q. Does that change your answers in any way? 11 A. No. 12 Q. Okay. So going back to House Bill 218, I think 13 this is the engrossed version. 14 A. Okay. 15 Q. Do you recognize it as that? 16 A. I don't know, but I'm okay if you tell me it 17 is. 18 Q. Do you know who authored this bill? 19 A. Brown of Kaufman, Berman, Bohac, Riddle, and 20 others. 21 Q. Are you familiar with its provisions? 22 A. Only cursorily. 23 Q. I think turning to Page 9 of the exhibit, 24 Section 63.0101. Can you review that section? 25 A. Okay. (Reading documents.) Okay.</p>	<p style="text-align: center;">111</p> <p>1 A. Okay. Yes. 2 Q. Any other differences, substantive differences 3 that you see? 4 A. No, but I haven't referenced them. Should I do 5 that? 6 Q. Sure. You can. 7 A. I don't see any other differences. 8 Q. Did you or anyone in the Lieutenant Governor's 9 Office play any role in the development of HB 218? 10 A. No. 11 Q. Were you present at any meetings during the 12 development or drafting of HB 218? 13 A. No, I wasn't. 14 Q. Are you aware of who in particular drafted 15 HB 218? 16 A. No. 17 Q. Do you know of any concerns about Section 5 18 preclearance with regard to HB 218? 19 A. No. 20 Q. Do you know if concerns about Section 5 21 preclearance impacted any of the bill's provisions? 22 A. Not that I'm aware of. 23 Q. Do you know if that's why nonphoto ID was 24 included in the bill? 25 A. No.</p>
<p style="text-align: center;">110</p> <p>1 Q. So we had discussed earlier House Bill 1706. 2 Now that you've reviewed the provisions in House Bill 3 218, does it appear that, for the most part, follows 4 House Bill 1706 with regard to acceptable forms of voter 5 ID? 6 A. Yes. 7 MR. FREDERICK: Objection, vague, but you 8 can answer. 9 A. Yes, for the most part. 10 Q. (By Ms. Berkower) Are there any differences? 11 A. Yes. There are some drafting differences. 12 Q. Any substantive differences in the types of ID 13 that are accepted? 14 A. I haven't cross-checked them. I don't -- I 15 don't see any major differences. 16 Q. I think if you recall, House Bill 1706 allowed 17 a form of photo ID issued by county election officials. 18 A. Okay. 19 Q. Do you see that as an acceptable form of ID in 20 House Bill 218? 21 A. Sometimes you argue that a county is a 22 political subdivision of the state, so under Subsection 23 8, it could be possible, but it's not the same. 24 Q. It's not specifically listed in this bill the 25 way it was in House Bill 1706?</p>	<p style="text-align: center;">112</p> <p>1 Q. Are you aware of any concerns raised during the 2 development, drafting, or consideration of HB 218 about 3 the impact that it would have on Hispanic voters? 4 MR. FREDERICK: Objection. To the extent 5 it calls for communications or thought processes of the 6 Lieutenant Governor or any legislator, I instruct you 7 not to answer. However, to the extent this question 8 just asked whether or not you know, you may answer. 9 A. I'm not aware of it. 10 Q. (By Ms. Berkower) You're not aware of any such 11 concerns? 12 A. No. 13 Q. Are you aware of any such concerns with regard 14 to the impact the bill might have had on black voters? 15 MR. FREDERICK: The same instruction. 16 A. No. 17 Q. (By Ms. Berkower) You're not aware of any? 18 A. I'm not aware of any. 19 Q. What about any concerns raised during the 20 development, drafting, or consideration of the bill that 21 it might have on other minority voters? 22 A. I'm not aware of any. 23 MR. FREDERICK: The same objection. 24 Q. (By Ms. Berkower) Are you aware of any analysis 25 conducted to determine the impact of the bill on racial</p>



<p style="text-align: center;">113</p> <p>1 or ethnic minorities?</p> <p>2 MR. FREDERICK: The same instruction. I</p> <p>3 instruct you not to reveal the substance of any</p> <p>4 analysis, but you may answer the question whether or not</p> <p>5 you were aware.</p> <p>6 A. I'm not aware of any.</p> <p>7 Q. (By Ms. Berkower) Did you monitor consideration</p> <p>8 of HB 218 in the House?</p> <p>9 A. No.</p> <p>10 Q. Did you learn of any concerns raised about the</p> <p>11 bill during its consideration in the House?</p> <p>12 MR. FREDERICK: The same instruction. You</p> <p>13 may answer whether or not you --</p> <p>14 A. No.</p> <p>15 Q. (By Ms. Berkower) You did not learn of any such</p> <p>16 concerns?</p> <p>17 A. No.</p> <p>18 Q. I think -- do you know Janice McCoy?</p> <p>19 A. Yes.</p> <p>20 Q. Who is she?</p> <p>21 A. She is chief of staff for Senator Fraser.</p> <p>22 Q. Two weeks ago, in her deposition, she testified</p> <p>23 that she had had one or two dozen conversations with the</p> <p>24 Lieutenant Governor's Office about HB 218, including</p> <p>25 with the person who staffed the affairs for the</p>	<p style="text-align: center;">115</p> <p>1 not in evidence and calls for speculation. But I also</p> <p>2 instruct you, based on privilege, not to answer if it</p> <p>3 requires you to reveal thought processes or any</p> <p>4 privileged communications.</p> <p>5 A. I don't know why.</p> <p>6 Q. (By Ms. Berkower) Do you know if he did have an</p> <p>7 interest in voter ID?</p> <p>8 MR. FREDERICK: The same objection, but</p> <p>9 you may answer whether or not you knew.</p> <p>10 A. I assume so. He carried it four times.</p> <p>11 Q. (By Ms. Berkower) With regard to why he had an</p> <p>12 interest, are you --</p> <p>13 A. No, I'm not aware of why he had an interest.</p> <p>14 Or three times, I guess. He didn't carry it four times.</p> <p>15 Q. Ms. McCoy testified, in her deposition, that</p> <p>16 she and a staff person from the Lieutenant Governor's</p> <p>17 Office generally spoke about the process of moving HB</p> <p>18 218 in the Senate. Did she speak with you?</p> <p>19 MR. FREDERICK: Objection, assumes facts</p> <p>20 not in evidence. You may answer if you can.</p> <p>21 A. I don't remember that.</p> <p>22 Q. (By Ms. Berkower) Do you remember talking to</p> <p>23 Ms. McCoy at all about HB 218?</p> <p>24 A. Not really, no.</p> <p>25 Q. Ms. McCoy testified that she never had any</p>
<p style="text-align: center;">114</p> <p>1 Lieutenant Governor. Was that you?</p> <p>2 A. No.</p> <p>3 Q. Do you know who it was?</p> <p>4 A. I think it was Bryan, but it may not have been.</p> <p>5 Q. If it wasn't him, do you know who it may have</p> <p>6 been?</p> <p>7 A. No.</p> <p>8 Q. Do you know if Senator Fraser met with the</p> <p>9 Lieutenant Governor's Office and indicated that he</p> <p>10 wanted to sponsor HB 218 in the Senate?</p> <p>11 MR. FREDERICK: Objection, and instruct</p> <p>12 you not to answer on the basis of legislative privilege,</p> <p>13 because this question calls for the substance of a</p> <p>14 communication. I will instruct you not to answer.</p> <p>15 A. Okay. I can't answer that.</p> <p>16 MS. BERKOWER: Senator Fraser testified</p> <p>17 that he had such a meeting. Are you still going to</p> <p>18 assert privilege?</p> <p>19 MR. FREDERICK: I mean, that -- I don't</p> <p>20 recall that testimony. If you want to introduce it as</p> <p>21 an exhibit here, that's fine, we'll talk about it. But</p> <p>22 otherwise, I'll instruct her not to answer.</p> <p>23 Q. (By Ms. Berkower) Do you know why Senator</p> <p>24 Fraser had an interest in voter ID?</p> <p>25 MR. FREDERICK: Objection, assumes facts</p>	<p style="text-align: center;">116</p> <p>1 discussions with anyone in the Lieutenant Governor's</p> <p>2 Office about the impact of HB 218 on minority voters.</p> <p>3 To your knowledge, is that accurate?</p> <p>4 MR. FREDERICK: Objection, assumes facts</p> <p>5 not in evidence. You may answer whether or not you</p> <p>6 believe it's accurate.</p> <p>7 A. I think that's accurate.</p> <p>8 Q. (By Ms. Berkower) Are you aware of any</p> <p>9 communications considering the impact of HB 218 on</p> <p>10 minority voters?</p> <p>11 MR. FREDERICK: Objection.</p> <p>12 A. I'm not aware of any.</p> <p>13 Q. (By Ms. Berkower) I should have added to end of</p> <p>14 that question. I'll start that one over.</p> <p>15 A. Okay.</p> <p>16 Q. Are you aware of any communications within the</p> <p>17 Lieutenant Governor's Office concerning the impact of HB</p> <p>18 218 on minority voters?</p> <p>19 MR. FREDERICK: I'll object and instruct</p> <p>20 you not to reveal the substance of any communication,</p> <p>21 but as to the existence of the communication, you may</p> <p>22 answer a question.</p> <p>23 A. I don't remember any.</p> <p>24 Q. (By Ms. Berkower) Are you aware of any</p> <p>25 communications outside the Lieutenant Governor's Office</p>



<p style="text-align: center;">117</p> <p>1 concerning the impact of HB 218 on minority voters?</p> <p>2 MR. FREDERICK: The same instruction. You</p> <p>3 may answer as to the existence of a communication.</p> <p>4 A. I know there was testimony in the State Affairs</p> <p>5 Committee on the bill, but I don't remember the</p> <p>6 substance of the testimony.</p> <p>7 Q. (By Ms. Berkower) Testimony about the impact on</p> <p>8 minority voters?</p> <p>9 MR. FREDERICK: Objection, vague.</p> <p>10 Objection, form.</p> <p>11 Q. (By Ms. Berkower) When you say you're aware of</p> <p>12 communications concerning the impact of HB 218 on</p> <p>13 minority voters outside the Lieutenant Governor's</p> <p>14 Office, and you referred to testimony on the Floor.</p> <p>15 A. No, it wasn't on the Floor.</p> <p>16 Q. Oh.</p> <p>17 A. It was in the Senate State Affairs Committee</p> <p>18 and I don't remember the substance of the testimony, but</p> <p>19 I do think that there was some testimony on -- public</p> <p>20 testimony on that issue.</p> <p>21 Q. Are you aware of any communications in the</p> <p>22 Governor's Office concerning the impact of HB 218 on</p> <p>23 minority voters?</p> <p>24 MR. FREDERICK: Objection. I'll object on</p> <p>25 the basis of legislative privilege. You may answer to</p>	<p style="text-align: center;">119</p> <p>1 Republican, so I assume he's a Republican. He's</p> <p>2 currently running as a Republican, so I assume he's a</p> <p>3 Republican.</p> <p>4 Q. And you said -- I'm sorry. I missed what you</p> <p>5 said. You said you were not aware that he said that</p> <p>6 voter ID --</p> <p>7 A. I was not aware of that.</p> <p>8 Q. What were the purposes of HB 218's authors in</p> <p>9 introducing it?</p> <p>10 A. I'm not aware of their purpose.</p> <p>11 Q. Do you know if HB 218, in part, was designed to</p> <p>12 prevent noncitizens from voting?</p> <p>13 A. I'm not aware of that.</p> <p>14 Q. Do you know -- are you aware of Representative</p> <p>15 Betty Brown stating on the House Floor that the bill</p> <p>16 was, quote, "designed to keep illegal aliens,</p> <p>17 noncitizens, and other people otherwise not qualified</p> <p>18 from voting"?</p> <p>19 A. No. I'm not aware of that.</p> <p>20 Q. Do you know if HB 218 would have prevented</p> <p>21 noncitizen voting?</p> <p>22 MR. FREDERICK: Objection, calls for</p> <p>23 speculation.</p> <p>24 A. I'm not aware of it anyway.</p> <p>25 Q. (By Ms. Berkower) You don't know if HB 218</p>
<p style="text-align: center;">118</p> <p>1 whether or not you're aware.</p> <p>2 A. No, I'm not aware of it.</p> <p>3 Q. (By Ms. Berkower) Are you aware of any</p> <p>4 communications from election officials that led -- are</p> <p>5 you aware of any communications from election officials</p> <p>6 concerning HB 218?</p> <p>7 A. Again, I know there was testimony in the Senate</p> <p>8 State Affairs Committee, but I am not aware of the</p> <p>9 substance of that testimony.</p> <p>10 Q. Did the Lieutenant Governor's Office have any</p> <p>11 communications with election officials concerning</p> <p>12 HB 218?</p> <p>13 MR. FREDERICK: I'll object and instruct</p> <p>14 you not to reveal the substance, but you may answer</p> <p>15 about the existence of a communication.</p> <p>16 A. I'm not aware of any.</p> <p>17 Q. (By Ms. Berkower) Are you aware that the</p> <p>18 Secretary of State, at the time, Roger Williams, said he</p> <p>19 wasn't sure if a photo ID bill would improve turnout?</p> <p>20 MR. FREDERICK: Objection. It assumes</p> <p>21 facts not in evidence.</p> <p>22 A. I'm not aware of that.</p> <p>23 Q. (By Ms. Berkower) What is the party affiliation</p> <p>24 of Roger Williams?</p> <p>25 A. He's running for a congressional seat as a</p>	<p style="text-align: center;">120</p> <p>1 would have prevented noncitizen voting?</p> <p>2 MR. FREDERICK: Objection, asked and</p> <p>3 answered. Objection, calls for speculation.</p> <p>4 You can answer.</p> <p>5 A. I'm not aware of it, no.</p> <p>6 Q. (By Ms. Berkower) Can a noncitizen obtain a</p> <p>7 driver's license in Texas?</p> <p>8 MR. FREDERICK: Objection, calls for</p> <p>9 speculation. You may answer.</p> <p>10 A. Not under the current DPS rules for issuing a</p> <p>11 driver's license.</p> <p>12 Q. (By Ms. Berkower) What are the current DPS</p> <p>13 rules for issuing a driver's license?</p> <p>14 A. I don't know the specifics, but you have to</p> <p>15 show citizenship in order to get a driver's license now.</p> <p>16 Q. So lawful residents who are not citizens cannot</p> <p>17 get driver's licenses?</p> <p>18 A. Oh, I'm sorry. Yeah, you can if you're -- I</p> <p>19 thought you were asking about illegal immigrants. But</p> <p>20 legal immigrants would be appropriate visa requirements,</p> <p>21 or whatever they need from the federal government, can</p> <p>22 receive driver's licenses.</p> <p>23 Q. Can noncitizens obtain concealed handgun</p> <p>24 licenses in Texas?</p> <p>25 A. I think so, if they have the proper</p>



<p>121</p> <p>1 documentation for meeting all of the other requirements 2 of concealed carry. You have to have mental status, and 3 they have to show legal residence here.</p> <p>4 Q. Can noncitizens obtain military ID?</p> <p>5 A. I'm not aware of whether or not they can. I 6 would assume they cannot.</p> <p>7 Q. Even if they are lawful residents?</p> <p>8 A. Well, if they're lawful residents, yes, if they 9 have that.</p> <p>10 Q. So just to be clear, for noncitizens who are 11 lawfully within the United States --</p> <p>12 A. Right.</p> <p>13 Q. -- can they obtain a driver's license in Texas?</p> <p>14 A. Yes, they can. If you show lawful residence.</p> <p>15 Q. What about concealed handgun license?</p> <p>16 MR. FREDERICK: Objection, form. You may 17 answer.</p> <p>18 A. I think you can, if you show lawful residence.</p> <p>19 Q. (By Ms. Berkower) Can lawfully -- can 20 noncitizens who are lawfully in the United States obtain 21 military ID?</p> <p>22 A. I assume so. I don't know.</p> <p>23 Q. Would you agree that if the prevention of 24 noncitizens voting was a purpose of HB 218, that in 25 fact, HB 218 would not serve that purpose?</p>	<p>123</p> <p>1 A. My understanding is that on a driver's license, 2 it shows whether or not you are a legal resident. It 3 says Visa or it says -- it is noted on the document. I 4 don't know about military IDs, and I don't know about 5 concealed carry permits. But it's my understanding the 6 ID itself says whether or not you're a legal resident.</p> <p>7 Q. (By Ms. Berkower) Versus a citizen?</p> <p>8 A. Yes.</p> <p>9 Q. After the House passed HB 218, was it 10 considered by the Senate?</p> <p>11 A. Yes, it was.</p> <p>12 Q. Do you know which --</p> <p>13 A. Well, it was referred to committee in the 14 Senate.</p> <p>15 Q. Which committee is that?</p> <p>16 A. State Affairs.</p> <p>17 Q. Did the Lieutenant Governor make that committee 18 assignment?</p> <p>19 A. Yes, he did.</p> <p>20 Q. Do you remember who was on the committee?</p> <p>21 A. No. I remember the chair of the committee.</p> <p>22 Q. Who was that?</p> <p>23 A. Senator Duncan.</p> <p>24 Q. And the Lieutenant Governor assigned him to be 25 the chair?</p>
<p>122</p> <p>1 MR. FREDERICK: Objection, calls for 2 speculation.</p> <p>3 A. I don't know.</p> <p>4 Q. (By Ms. Berkower) Well, what don't you know?</p> <p>5 A. I don't know whether or not it would achieve 6 that purpose.</p> <p>7 Q. Why not?</p> <p>8 MR. FREDERICK: Objection, form.</p> <p>9 Objection, vague. Objection, calls for speculation.</p> <p>10 You may answer.</p> <p>11 A. I haven't gone through the specifics of the 12 legislation to determine if you went through each of 13 those requirements to determine. But I assume if you 14 are lawfully in the United States, that you can get a 15 concealed carry permit and you can vote.</p> <p>16 Q. (By Ms. Berkower) So just because you get 17 concealed carry permit --</p> <p>18 A. Or a military ID or a driver's license.</p> <p>19 Q. -- you still may be a noncitizen?</p> <p>20 A. Yes.</p> <p>21 Q. So how does showing a driver's license or a 22 military ID or a concealed carry license ensure that the 23 person who shows up at the polls is actually a citizen?</p> <p>24 MR. FREDERICK: Objection, calls for 25 speculation. You may answer if you can.</p>	<p>124</p> <p>1 A. Yes.</p> <p>2 Q. Did the committee hold hearings on HB 218?</p> <p>3 A. Yes, they did.</p> <p>4 Q. Since the Lieutenant Governor is not on the 5 committee, can he call witnesses?</p> <p>6 A. No.</p> <p>7 Q. Was he involved with choosing which witnesses 8 would be called?</p> <p>9 A. Not that I remember, no.</p> <p>10 Q. Is he ever involved with choosing which 11 witnesses will be called in the committee?</p> <p>12 MR. FREDERICK: Objection, vague. You may 13 answer.</p> <p>14 A. Yes, he is.</p> <p>15 Q. (By Ms. Berkower) When?</p> <p>16 MR. FREDERICK: The same objection. You 17 may answer.</p> <p>18 A. When the committee asks for some help.</p> <p>19 Q. (By Ms. Berkower) Did that ever happen with 20 regard to voter ID?</p> <p>21 A. Yes. On Senate Bill 14, I know we were asked, 22 "Can you help make some of the calls to get people here 23 to speak to the Committee of the Whole?"</p> <p>24 Q. Any other of the voter ID bills?</p> <p>25 A. Not that I remember.</p>



<p>125</p> <p>1 Q. So do you know how the witnesses were selected 2 for purposes of testifying about HB 218 in the State 3 Affairs Committee?</p> <p>4 A. No, I'm not.</p> <p>5 Q. Do you know if the bill was amended in the 6 committee?</p> <p>7 A. I don't remember.</p> <p>8 Q. Maybe I can help with that. 9 I think what we have what will be 10 Exhibit 102. 11 (Exhibit 102 marked for identification.) 12 Q. (By Ms. Berkower) What is this? 13 A. Okay. This is the legislative tracking history 14 for House Bill 218.</p> <p>15 Q. After -- can you review this, please? 16 A. Sure. The bill was substituted. 17 Q. What does that mean? 18 A. That means that there were some changes made to 19 it, and they were rolled into an entirely new bill, 20 which was then prepared and distributed to the whole 21 Senate. 22 Q. Do you know what those changes were? 23 A. No, I'm not aware of them. 24 Q. After the committee considered it, was it voted 25 out of the committee?</p>	<p>127</p> <p>1 Q. -- to suspend -- if senators had to consider 2 every bill in order -- 3 A. Uh-huh. 4 Q. -- then they would -- if they had priorities of 5 certain bills, they'd have to vote on everything else in 6 front of it in line before they could get to that 7 particular bill. Is that -- 8 A. That's correct. So it's actually a suspension 9 of a rule, not a rule. 10 Q. I see. Is it used commonly? 11 A. Yes. 12 Q. Why two-thirds? 13 A. That's what the senators chose to put in the 14 Senate rules as being the required vote count for a 15 suspension of those rules. 16 Q. Do you know why two-thirds is the number that's 17 chosen? 18 A. No, I don't. The senators choose it. 19 Q. Do you know the purpose of the rule? 20 A. Well, the purpose of the rule is to allow the 21 senators not to abide by the regular order of business 22 so that they can step outside of the regular order of 23 business and hear what they want to hear when they want 24 to hear it, subject to some other rules. 25 Q. Janice McCoy testified in her deposition that</p>
<p>126</p> <p>1 A. Yes. 2 Q. Do you remember that vote? 3 A. I remember it occurred. I don't remember the 4 details. 5 Q. Do you remember if it was voted out on party 6 lines? 7 A. I don't remember. Wait, I can look. It looks 8 like it was. 9 Q. Did HB 218 require the support of two-thirds of 10 senators to bring it to the Floor for a vote? 11 A. Yes, it did. 12 Q. Why is that? 13 A. Because the Senate rules require the senators 14 to follow the regular order of business, which is set 15 out in the rules as an order, in order to hear bills in. 16 The senators typically suspend the regular 17 order of business by a two-thirds vote, which is 18 required by the rules, in order to hear bills out of 19 that order. This bill would have been taken out of 20 order and -- well, let's just fast forward through the 21 questions -- it failed to suspend the two-thirds rule, 22 so it could not be taken out of the regular order of 23 business. 24 Q. So to be clear, if the two-thirds rule -- 25 A. It's not a rule.</p>	<p>128</p> <p>1 the purpose of the rule is to get general consensus on 2 bills before they're voted on. Do you agree with that? 3 MR. FREDERICK: Objection, assumes facts 4 not in evidence. 5 You may answer. 6 A. To me, there's a difference between why the 7 senators allow that measure in the Senate rules and the 8 purpose of the rule itself. I mean, the rule allows for 9 a suspension of the regular order of business, and it's 10 so that you can take up bills. Now, the reason why that 11 rule was in the Senate rules to allow that suspension is 12 the senators' business, and the senators may have chosen 13 to have that rule because they want to promote 14 consensus. But the rule itself, it allows suspension of 15 the rules by a two-thirds vote is there -- the purpose 16 of that is to suspend the other rules. 17 Q. (By Ms. Berkower) And the purpose of that is 18 basically get things done, correct? 19 A. Yes. Right. 20 Q. Otherwise, a bill that has -- that's divisive 21 could potentially hold up all other bills; is that 22 accurate? 23 A. That's correct, but the motivation for senators 24 putting that rule in their rules that allows for a 25 suspension is something I wouldn't know. What that rule</p>



<p style="text-align: center;">129</p> <p>1 does is a factual situation of, it allows you to suspend 2 other rules.</p> <p>3 Q. Do you agree that another factual consequence 4 of the rule is that it requires, generally, consensus on 5 bills before they're voted on out of order?</p> <p>6 A. I personally feel that way, yes.</p> <p>7 Q. Janice McCoy testified in her deposition that 8 most bills are brought to a vote by using the two-thirds 9 rule.</p> <p>10 A. That's correct.</p> <p>11 Q. What was the partisan composition of the Senate 12 in 2007?</p> <p>13 A. Oh, I don't remember. Was it 20 Republicans 14 and 11 Democrats? I just don't remember.</p> <p>15 Q. Do you remember how many of the Democrats 16 opposed 218?</p> <p>17 A. No, I don't.</p> <p>18 Q. If all of the Democrats were present on the 19 Floor to vote against a bill, could they block 20 legislation subject to the two-thirds rule?</p> <p>21 A. Yes.</p> <p>22 Q. Did the Lieutenant Governor attempt to get 23 House Bill 218 brought to the Senate Floor for a vote?</p> <p>24 A. Yes, he did.</p> <p>25 Q. What's his role exactly when a bill is brought</p>	<p style="text-align: center;">131</p> <p>1 calls for the Lieutenant Governor's reasons for doing 2 something, and I instruct you not to answer. If you 3 know -- if you can answer without revealing that or a 4 privileged communication, you can do so.</p> <p>5 A. To a certain extent, I can't answer this 6 question, to some extent I can. And sometimes the 7 senator doesn't have the 21 votes and doesn't know the 8 senator doesn't have the 21 votes. And so sometimes the 9 Lieutenant Governor won't recognize the senator on the 10 bill because he knows it will not suspend.</p> <p>11 Q. (By Ms. Berkower) Is it ever the case that the 12 Lieutenant Governor won't recognize a senator because he 13 doesn't want the bill to be brought to a vote?</p> <p>14 MR. FREDERICK: Objection, calls for the 15 Lieutenant Governor's thought process, mental 16 impressions.</p> <p>17 I instruct you not to answer.</p> <p>18 A. I can't answer that.</p> <p>19 Q. (By Ms. Berkower) When the bill is brought to 20 the -- when a bill is brought to the Floor of the 21 Senate, the Lieutenant Governor can't participate in 22 debate, can he?</p> <p>23 A. Not unless he is a member of the Committee of 24 the Whole.</p> <p>25 Q. Is his role primarily procedural when he's</p>
<p style="text-align: center;">130</p> <p>1 the Senate Floor?</p> <p>2 A. The Senator asks him to bring the bill to the 3 Floor for discussion and a vote, and he does so when he 4 chooses to do so.</p> <p>5 Q. So another senator has to make a motion to 6 bring it up for a vote?</p> <p>7 A. Yes. The Lieutenant Governor cannot call up a 8 bill by himself.</p> <p>9 Q. And the Lieutenant Governor's merely rules on 10 the motion from the other senator?</p> <p>11 A. Well, the senator who is sponsoring or 12 authoring the legislation has to ask publicly "may I be 13 recognized on" blah, blah, blah.</p> <p>14 Q. And the Lieutenant Governor rules on his 15 request?</p> <p>16 A. Recognizes him for hearing on the bill, or her.</p> <p>17 Q. Does the Lieutenant Governor have any 18 discretion to grant or deny the senator's request?</p> <p>19 A. Yes.</p> <p>20 Q. What is that discretion?</p> <p>21 A. He can choose not to recognize the senator.</p> <p>22 Q. Does that ever happen?</p> <p>23 A. It has from time to time.</p> <p>24 Q. Why has that happened?</p> <p>25 MR. FREDERICK: Objection to the extent it</p>	<p style="text-align: center;">132</p> <p>1 presiding over the Senate Floor?</p> <p>2 A. Yes.</p> <p>3 Q. And can he vote if there's not a tie?</p> <p>4 A. No.</p> <p>5 Q. Can you describe the circumstances under which 6 HB 218 was brought to the Senate Floor?</p> <p>7 MR. FREDERICK: I'll object only to the 8 extent it calls for mental impressions or privileged 9 communications. If you can generally describe the 10 circumstances without revealing that, you may.</p> <p>11 A. I don't. I don't really know what you're 12 asking. I'm sorry.</p> <p>13 Q. (By Ms. Berkower) Okay. That's fine.</p> <p>14 Were you present in any meetings or 15 conversations the Lieutenant Governor held concerning 16 the timing of the vote on HB 218?</p> <p>17 A. I'm sure I was, but I don't remember any formal 18 meetings. I remember the bill coming out of committee 19 and then being put on the Intent calendar, and then 20 beyond that, I don't really remember the process. The 21 end of May is -- or middle of May is really a busy time 22 in the Senate, and I don't remember any formal meetings 23 on this issue.</p> <p>24 Q. With regard to the circumstances under which 25 HB 218 was brought to the Floor, is the Lieutenant</p>



<p style="text-align: center;">133</p> <p>1 Governor the best person who would know what those 2 circumstances were?</p> <p>3 MR. FREDERICK: I'll object that this 4 calls for speculation. I object to relevance as well.</p> <p>5 A. I would suggest that the person who can bring 6 up the bill, who is the bill's sponsor, is the best 7 person to ask about the timing of when it was brought 8 up, because they have to request to bring up the bill.</p> <p>9 Q. (By Ms. Berkower) Are you aware of any 10 conversation between Senator Uresti and any member of 11 the Senate the day before the vote?</p> <p>12 A. Yes, I'm aware that Senator Uresti told people 13 and told the Lieutenant Governor he was not feeling 14 well.</p> <p>15 Q. When the Lieutenant Governor called a vote to 16 bring HB 218 to the Senate for a vote, how many senators 17 were present?</p> <p>18 A. I don't remember.</p> <p>19 Q. Do you remember if anyone was not present?</p> <p>20 A. I think Senator Uresti was not present at the 21 first at the time of the vote.</p> <p>22 Q. Why not?</p> <p>23 MR. FREDERICK: Objection, calls for 24 speculation. You can answer if you know.</p> <p>25 Q. (By Ms. Berkower) Do you remember why?</p>	<p style="text-align: center;">135</p> <p>1 quorum for votes.</p> <p>2 Q. (By Ms. Berkower) So does it happen that 3 senators will bring particular bills up for a vote at a 4 time that they know it's more likely to pass given other 5 senators' absence?</p> <p>6 A. Yes.</p> <p>7 Q. When does that happen?</p> <p>8 A. Well, it happens from time to time, depending 9 on what the senators want to accomplish. It's their 10 bills, and they can choose to bring up a bill or not 11 bring up a bill.</p> <p>12 Q. Can you remember any specific instances?</p> <p>13 MR. FREDERICK: Objection, vague.</p> <p>14 Q. (By Ms. Berkower) Do you understand the 15 question?</p> <p>16 A. I think so. I can't recall any at the moment, 17 but it does happen from time to time.</p> <p>18 Q. In May 2007, were you or the Lieutenant 19 Governor aware of any concerns that HB 218s would 20 disproportionately harm minority voters?</p> <p>21 MR. FREDERICK: I'll object on the basis 22 of legislative privilege, to the extent this calls for 23 the Lieutenant Governor's or your thought process. 24 However, you may answer as to the question whether or 25 not you were aware.</p>
<p style="text-align: center;">134</p> <p>1 A. I think he was sick, but I don't know that for 2 a fact.</p> <p>3 Q. So why was the vote held when not all members 4 were there?</p> <p>5 MR. FREDERICK: Objection. I'll object on 6 the basis of legislative privilege and instruct you not 7 to answer the question.</p> <p>8 A. Okay. I can't answer that question.</p> <p>9 Q. (By Ms. Berkower) Janice McCoy testified in her 10 deposition that each HB 218 was brought to the Floor at 11 a time when it was known that, quote, a particular 12 senator was absent and that this -- unquote, and that 13 this meant the bill would pass. That's from her 14 deposition at Page 70, if you wanted to look at it. Do 15 you agree with that statement?</p> <p>16 MR. FREDERICK: Object, assumes facts not 17 in evidence and object to relevance. But you can answer 18 if you can.</p> <p>19 A. Again, the senator is the person who chooses 20 when he wishes to bring up the bill, and so it may have 21 been relevant for Senator Fraser to ask at that time.</p> <p>22 The rules contemplate that not all 23 senators are on the Floor at all times, and the rules 24 contemplate a quorum and what constitutes a quorum, and 25 they require a quorum for votes, but nothing more than a</p>	<p style="text-align: center;">136</p> <p>1 A. No, I was not aware.</p> <p>2 Q. (By Ms. Berkower) Was the Lieutenant Governor 3 aware of any such concerns?</p> <p>4 MR. FREDERICK: The same objection.</p> <p>5 A. I don't know.</p> <p>6 Q. (By Ms. Berkower) Is the Lieutenant Governor 7 the only person who could answer that question?</p> <p>8 MR. FREDERICK: Objection, calls for 9 speculation.</p> <p>10 A. I don't know.</p> <p>11 Q. (By Ms. Berkower) Do you know if the Lieutenant 12 Governor would know if he was aware, in May 2007, of any 13 concerns raised about HB 218?</p> <p>14 A. I don't know. He may not remember.</p> <p>15 Q. Assuming he remembered -- forget that.</p> <p>16 Do you know why the vote on HB 218 was 17 held when not all members are present?</p> <p>18 MR. FREDERICK: Objection, calls for 19 speculation and objection, calls for legislative 20 privilege.</p> <p>21 If you can answer based on something other 22 than internal thought processes or privileged 23 communications, you may do so.</p> <p>24 A. No.</p> <p>25 Q. (By Ms. Berkower) You don't know why?</p>



<p style="text-align: center;">137</p> <p>1 A. No.</p> <p>2 Q. What is Senator Uresti's race?</p> <p>3 MR. FREDERICK: Objection, relevance.</p> <p>4 Q. (By Ms. Berkower) You can answer.</p> <p>5 A. He's -- it depends on if you use census data,</p> <p>6 he's of Hispanic background, Anglo.</p> <p>7 Q. (By Ms. Berkower) What part of Texas does he</p> <p>8 represent?</p> <p>9 A. Oh, he's got a huge district. West of</p> <p>10 San Antonio.</p> <p>11 Q. What's the racial composition of his</p> <p>12 constituents?</p> <p>13 MR. FREDERICK: Objection, relevance.</p> <p>14 A. I have no idea.</p> <p>15 Q. (By Ms. Berkower) Do you know if it's largely</p> <p>16 minority?</p> <p>17 MR. FREDERICK: Same objection.</p> <p>18 A. I don't know.</p> <p>19 Q. (By Ms. Berkower) Did the Lieutenant Governor</p> <p>20 have concerns about holding a vote when a Hispanic</p> <p>21 member of the Senate was sick, given the constituency</p> <p>22 that he represented and the concerns raised about the</p> <p>23 impact of the bill on minority voters?</p> <p>24 MR. FREDERICK: Objection, compound.</p> <p>25 Objection, legislative privilege. I instruct you not to</p>	<p style="text-align: center;">139</p> <p>1 Q. Did the Senate take any further action on</p> <p>2 HB 218?</p> <p>3 A. Yes. They authorized another co-sponsor.</p> <p>4 Q. What happened next?</p> <p>5 A. Nothing.</p> <p>6 Q. Why not?</p> <p>7 MR. FREDERICK: Objection, calls for</p> <p>8 speculation. Objection to the extent it calls for</p> <p>9 mental impressions or privileged communications.</p> <p>10 If you know and can answer without</p> <p>11 revealing privileged matters, you may do so.</p> <p>12 A. I think it's because Senator Fraser didn't ask</p> <p>13 to bring it back up again.</p> <p>14 Q. (By Ms. Berkower) Do you know why he didn't ask</p> <p>15 to bring it back up?</p> <p>16 MR. FREDERICK: Objection, legislative</p> <p>17 privilege and instruct you not to answer.</p> <p>18 MS. BERKOWER: I just asked if she knew</p> <p>19 why.</p> <p>20 MR. FREDERICK: Okay. If you want to ask</p> <p>21 her again.</p> <p>22 Q. (By Ms. Berkower) Do you know why Senator</p> <p>23 Fraser did not seek to bring it back for a vote?</p> <p>24 MR. FREDERICK: I'll object on the basis</p> <p>25 of privilege, only to the extent it calls for what his</p>
<p style="text-align: center;">138</p> <p>1 answer.</p> <p>2 A. I can't answer that.</p> <p>3 Q. (By Ms. Berkower) Can you think of any other</p> <p>4 instance when a vote was held, when a member of the</p> <p>5 Senate was sick, with the intention to pass a bill in</p> <p>6 the senator's absence?</p> <p>7 MR. FREDERICK: Objection, relevance.</p> <p>8 You may answer if you can.</p> <p>9 A. I am certain it has happened, but I can't think</p> <p>10 of an occasion.</p> <p>11 Q. (By Ms. Berkower) Was a request made to verify</p> <p>12 the vote on HB 218?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember the circumstances?</p> <p>15 A. Senator Uresti returned to the Senate Floor.</p> <p>16 Q. Do you remember if there was a motion to</p> <p>17 suspend the regular order of business?</p> <p>18 A. Yes.</p> <p>19 Q. Did that motion fail or pass?</p> <p>20 A. It failed.</p> <p>21 Q. Do you remember why?</p> <p>22 A. It didn't receive 21 votes.</p> <p>23 Q. Is that because Senator Uresti managed to</p> <p>24 return to the Senate in time for the vote?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">140</p> <p>1 understanding was, but as to whether or not you know,</p> <p>2 you may answer.</p> <p>3 A. I think I know, yes.</p> <p>4 Q. (By Ms. Berkower) Can you say why?</p> <p>5 MR. FREDERICK: Objection, legislative</p> <p>6 privilege. Instruct you not to answer.</p> <p>7 A. No, I can't.</p> <p>8 Q. (By Ms. Berkower) Were there any communications</p> <p>9 within the Lieutenant Governor's Office about HB 218</p> <p>10 after it failed to pass the Senate?</p> <p>11 MR. FREDERICK: I don't think that I will</p> <p>12 object and caution you: I don't believe that this</p> <p>13 question calls for privileged communications, so I would</p> <p>14 just caution you not to reveal the substance of any</p> <p>15 communication within the Lieutenant Governor's Office.</p> <p>16 A. I don't -- I don't remember any.</p> <p>17 Q. (By Ms. Berkower) Do you remember any</p> <p>18 communications between you or anyone else in the</p> <p>19 Lieutenant Governor's Office and any legislators after</p> <p>20 HB 218 did not pass the Senate?</p> <p>21 MR. FREDERICK: Objection, vague, and the</p> <p>22 same instruction on privilege.</p> <p>23 A. Yeah. I don't remember any.</p> <p>24 Q. Okay. I have what is going to be Exhibit 103.</p> <p>25 (Exhibit 103 marked for identification.)</p>



<p style="text-align: center;">141</p> <p>1 Q. (By Ms. Berkower) Do you recognize this? 2 A. No, I'm not familiar with it. 3 Q. Okay. Take a second to review it. 4 A. (Viewing documents.) Okay. 5 Q. Are you familiar with this article? 6 A. I don't remember it. Honestly, I don't. 7 Q. Do you remember the letter referenced in the article? 8 A. I remember checking some facts and some talking points, but I don't remember the draft of the letter. 9 Q. And this would be a letter that Lieutenant Governor David Dewhurst sent to the Senate concerning HB 218? 10 A. Uh-huh. Yes, I assume so. 11 Q. So you did not work on drafting this letter? 12 A. No. I may have fact checked it, but I didn't draft it. 13 Q. Do you know who would have drafted the letter? 14 A. I really don't remember. 15 Q. Do you remember when it was written? 16 A. Well, it says the day after, so I'm assuming it's May 16th, because it says the day after Senate consideration. 17 Q. In the letter, Lieutenant Governor Dewhurst asserted that photo ID requirements will prevent voting</p>	<p style="text-align: center;">143</p> <p>1 MR. FREDERICK: Objection, calls for speculation. 2 Q. (By Ms. Berkower) You can answer. 3 A. I think it implies that that's what the bill contained. It doesn't say these are sufficient to constitute identification. 4 Q. Well, then he goes on to say, "Seriously, how can any American argue that this requirement is too onerous? I can only conclude that the senators who voted to block consideration of House Bill 218 did so not because it's good public policy, but because they don't believe in the basic American principle of One Person, One Vote. Doesn't that imply that the IDs that were listed in the previous paragraph would have ensured the basic American principle of One Person, One Vote?" 5 MR. FREDERICK: Objection, calls for speculation. Objection, assumes facts not in evidence. 6 A. I think this is his personal opinion, and I can't speak to that. 7 Q. (By Ms. Berkower) Is he the only person who can speak to his personal opinion? 8 MR. FREDERICK: Objection, this calls for speculation and assumes facts not in evidence. 9 A. I assume so. 10 Q. (By Ms. Berkower) Can you explain how any of</p>
<p style="text-align: center;">142</p> <p>1 by persons who are not U.S. citizens; is that correct? 2 A. Yes, it appears to be. 3 Q. The letter also asserts that a number of types of IDs that are not photo IDs are enough to establish identity; is that correct? 4 A. I'm not certain that's what it says. It says that that's what's in the legislation. It doesn't say that's enough to establish identity. 5 Q. Okay. Well, it says House Bill 218, and this is -- I'm reading now, I guess, from Lieutenant Governor's letter. "House Bill 218 was amended to allow voters to present other forms of identification, such as a military ID, a valid employee ID, citizenship certificate, passport, student ID card issued by a public college or university, handgun permit, utility bill, bank statement, pay stub, mail from a government entity, marriage license, birth certificate, adoption certificate, pilot's license, hunting license, or even a library card. What's so hard about this?" 6 A. Right. But it doesn't say that all of those are a sure fire form of identification. It just says that that's what's in the bill -- I mean, House Bill 218 says. 7 Q. But doesn't it imply that those are appropriate forms of ID for voters?</p>	<p style="text-align: center;">144</p> <p>1 the IDs listed here would prevent noncitizens from voting? 2 Q. (By Ms. Berkower) You may answer. 3 A. Well, as I said earlier, a passport would keep a noncitizen from voting because you have -- if you're not a citizen, you don't get a U.S. passport. You have a foreign passport with a U.S. Visa or something, so that would prohibit a noncitizen from voting. Again, I think that a driver's license has a note on it whether or not you're a citizen. 4 Q. Well, what about a valid employee ID? 5 MR. FREDERICK: Objection, form. 6 A. I wouldn't know whether or not they included citizenship on an employee ID. 7 Q. (By Ms. Berkower) What about a student card issued by a public college or university? 8 MR. FREDERICK: Objection, form. 9 A. Well, again, I don't know whether or not they include citizenship on that. 10 Q. (By Ms. Berkower) What about a utility bill, bank statement, pay stub, or mail from a government entity? 11 MR. FREDERICK: Objection, compound.</p>



<p>145</p> <p>1 Objection, form.</p> <p>2 A. I don't know why a utility bill, bank</p> <p>3 statement, pay stub would have citizenship on it, but</p> <p>4 mail from a government entity may.</p> <p>5 Q. (By Ms. Berkower) What about a pilot's license,</p> <p>6 hunting license, or a library card?</p> <p>7 MR. FREDERICK: Objection, vague.</p> <p>8 Objection, compound.</p> <p>9 A. I'm not aware of pilots' licenses. I'm</p> <p>10 understanding that they have been changed substantially</p> <p>11 since 9-11, and that they do, at least in some places,</p> <p>12 show citizenship. But again, I'm not aware of</p> <p>13 citizenship on a hunting license or a library card.</p> <p>14 Q. (By Ms. Berkower) Do you have a library card?</p> <p>15 A. I have had one.</p> <p>16 MR. FREDERICK: Objection, relevance.</p> <p>17 A. Yes.</p> <p>18 Q. (By Ms. Berkower) Is your citizenship listed on</p> <p>19 it?</p> <p>20 A. No.</p> <p>21 Q. So this article, Exhibit 103, indicates that</p> <p>22 the Lieutenant Governor issued a second letter</p> <p>23 retracting the first letter. Do you remember that</p> <p>24 happening?</p> <p>25 A. No, I really don't.</p>	<p>147</p> <p>1 Was there a time when the Lieutenant</p> <p>2 Governor came to the conclusion that photo ID would</p> <p>3 prevent noncitizens from voting?</p> <p>4 MR. FREDERICK: Objection to the extent</p> <p>5 this calls for what the Lieutenant Governor believed, I</p> <p>6 would instruct you not to answer based on privilege.</p> <p>7 However, to the extent it just calls for your knowledge</p> <p>8 of whether or not there was a time, you may answer.</p> <p>9 A. I'm not aware of it.</p> <p>10 Q. (By Ms. Berkower) Were you ever a part of any</p> <p>11 discussions with the Lieutenant Governor concerning</p> <p>12 whether photo ID would prevent noncitizens from voting?</p> <p>13 A. I don't remember being part of a conversation</p> <p>14 on that issue.</p> <p>15 Q. Do you know if any such conversations existed</p> <p>16 between the Lieutenant Governor and others?</p> <p>17 A. I do not.</p> <p>18 Q. Would the Lieutenant Governor be the best</p> <p>19 person to answer that question?</p> <p>20 MR. FREDERICK: Objection, calls for</p> <p>21 speculation.</p> <p>22 A. I assume so.</p> <p>23 Q. (By Ms. Berkower) Is there a connection between</p> <p>24 the photo ID bill -- the photo ID bills that the Senate</p> <p>25 has considered and the growth of the noncitizen</p>
<p>146</p> <p>1 Q. The letter, the initial letter created a lot of</p> <p>2 fallout in the Senate. Do you remember that?</p> <p>3 A. I know people were upset after the voter ID.</p> <p>4 Q. Why were they upset?</p> <p>5 MR. FREDERICK: Objection. To the extent</p> <p>6 it calls for the thought process and mental impressions,</p> <p>7 I instruct you not to answer. But if you can do so</p> <p>8 without revealing that, you may answer.</p> <p>9 A. My understanding is that the Senate doesn't</p> <p>10 typically like partisan votes, and therefore, they were</p> <p>11 not happy about voting on partisan lines.</p> <p>12 Q. (By Ms. Berkower) They were not happy about</p> <p>13 voting on partisan lines on the rule to -- the vote to</p> <p>14 suspend the two-thirds rule? Is that what you're</p> <p>15 referring to?</p> <p>16 A. I think, yes.</p> <p>17 Q. Is that the only reason they were unhappy?</p> <p>18 MR. FREDERICK: Objection, speculation.</p> <p>19 Objection to the extent it calls for the thought process</p> <p>20 and mental impressions or privileged communications, I</p> <p>21 would instruct you not to answer. But if can do so</p> <p>22 without revealing that.</p> <p>23 A. I really don't know.</p> <p>24 Q. (By Ms. Berkower) Was there a time when the</p> <p>25 senator came to the -- sorry. I'll start again.</p>	<p>148</p> <p>1 population in Texas?</p> <p>2 MR. FREDERICK: Objection.</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. (By Ms. Berkower) Have you heard this assertion</p> <p>5 before?</p> <p>6 A. No, I don't think I have.</p> <p>7 Q. Exhibit 103 referenced individuals being</p> <p>8 removing from voters' lists after having voted. Are you</p> <p>9 aware of whether any of these individuals that the</p> <p>10 Lieutenant Governor mentioned were convicted of</p> <p>11 committing an election-related crime?</p> <p>12 A. I think there were some convictions, but I'm</p> <p>13 not aware of where. I just remember reading newspaper</p> <p>14 articles about them.</p> <p>15 Q. You don't remember who in particular was</p> <p>16 prosecuted?</p> <p>17 A. No. I think someone in South Texas and maybe</p> <p>18 someone in Harris County.</p> <p>19 Q. And you don't remember the crimes they were</p> <p>20 prosecuted for?</p> <p>21 A. No. The information that I received would have</p> <p>22 come from a newspaper article.</p> <p>23 Q. Okay. Was a photo ID bill filed in the Senate</p> <p>24 in 2009?</p> <p>25 A. Yes.</p>



<p style="text-align: center;">149</p> <p>1 Q. Is there a reason the photo ID bill originated 2 in the Senate in 2009 and not the House as it had 3 previously done?</p> <p>4 MR. FREDERICK: Objection, calls for 5 speculation. I'll object also on the legislative 6 privilege to the extent that it would involve any 7 privileged matter or thought process. If you can answer 8 without revealing privileged matters, you may.</p> <p>9 A. I don't think I can answer that question.</p> <p>10 Q. (By Ms. Berkower) Did the Lieutenant Governor 11 have any role in the decision to have the photo ID bill 12 originate in the Senate and not the House?</p> <p>13 MR. FREDERICK: We'll object on privilege 14 and instruct you not to reveal the substance of any 15 communication or any mental impression or thought 16 process of the Lieutenant Governor. But to the extent 17 it calls for whether or not he had any involvement, you 18 may answer.</p> <p>19 A. Yes, I think so.</p> <p>20 Q. (By Ms. Berkower) What role was that?</p> <p>21 MR. FREDERICK: The same objection and 22 instruction. Do not reveal the substance of any 23 confidential communication or the Lieutenant Governor's 24 thought process.</p> <p>25 A. I can't answer that question.</p>	<p style="text-align: center;">151</p> <p>1 engrossed. Is that correct? I think that's correct. 2 Q. So in comparing House Bill 218 and Senate Bill 3 362, does it appear that it, for the most part, follows 4 House Bill 218?</p> <p>5 A. Yes.</p> <p>6 Q. I think do you -- do you know if student IDs 7 are still permitted under Senate Bill 362?</p> <p>8 A. It doesn't appear that they are. No, they're 9 not. There's several of them missing here.</p> <p>10 Q. There's several what?</p> <p>11 A. I'm going to go through. Employee card is no 12 longer included, no student ID, and neither is the 13 employee card.</p> <p>14 Q. Okay. Anything else?</p> <p>15 A. I don't see it.</p> <p>16 Q. Is it possible that student IDs would still be 17 included, although not expressly, as an institution of 18 the state under part --</p> <p>19 A. It is possible, but only for public 20 institutions, not private higher ed.</p> <p>21 Q. Was photo ID a part of the Lieutenant 22 Governor's legislative agenda for 2009?</p> <p>23 A. Yes.</p> <p>24 Q. Were you or anyone in the Lieutenant Governor's 25 Office involved in the drafting or development of</p>
<p style="text-align: center;">150</p> <p>1 Q. Okay. Exhibit 29. 2 (Exhibit 29 marked for this deposition.)</p> <p>3 A. And do we know which version of this one this 4 one is? Is this as filed or is this --</p> <p>5 Q. I think this is as filed.</p> <p>6 A. Okay.</p> <p>7 Q. Do you recognize this?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Is this the bill you referred to as introduced 10 in 2009 on voter ID?</p> <p>11 A. Yes.</p> <p>12 Q. Who introduced it?</p> <p>13 A. Senator Fraser.</p> <p>14 Q. And what's the bill number?</p> <p>15 A. Senate Bill 362.</p> <p>16 Q. Do you know what forms of ID would have been 17 permitted under Senate Bill 362?</p> <p>18 A. I don't remember.</p> <p>19 Q. I think if you turn to Page 5, that might 20 help.</p> <p>21 A. Okay.</p> <p>22 Q. What forms of ID would have been allowed under 23 Senate Bill 362?</p> <p>24 A. This appears to be identical to -- what was the 25 last one -- Senate Bill -- House Bill 218, as</p>	<p style="text-align: center;">152</p> <p>1 SB 362?</p> <p>2 A. Not at the as-filed stage.</p> <p>3 Q. When were you involved?</p> <p>4 A. Our staff people assisted in any drafting of 5 amendments, and so Bryan would have been involved.</p> <p>6 Q. Just with amendments?</p> <p>7 A. I think so, yes.</p> <p>8 Q. So do you know who drafted SB 362?</p> <p>9 A. No, I don't. I assume it was a Texas 10 Legislative Council employee.</p> <p>11 Q. In conjunction with Senator Fraser?</p> <p>12 A. Yes.</p> <p>13 Q. Were there any communications with you or 14 anyone in the Lieutenant Governor's Office with Senator 15 Fraser or his office concerning the drafting or 16 development of SB 362?</p> <p>17 MR. FREDERICK: Objection, compound.</p> <p>18 A. Not prior to filing the legislation.</p> <p>19 Q. (By Ms. Berkower) Senator Fraser testified in 20 his deposition that in essence, he took HB 218 and filed 21 it the following session. Would you agree with that 22 assessment?</p> <p>23 MR. FREDERICK: Objection, assumes facts 24 not in evidence. It calls for speculation. You may 25 answer if you can.</p>



<p style="text-align: center;">153</p> <p>1 A. With -- the drafts are not identical, so there 2 are some changes. I would assume he used 218 as the 3 basis, but there are some differences.</p> <p>4 Q. (By Ms. Berkower) The ones you just described a 5 minute ago?</p> <p>6 A. Yes. There may be more. I didn't double 7 check. The whole front page is different.</p> <p>8 Q. Are you aware of any other source of any of the 9 legislative language in SB 362?</p> <p>10 A. No, I'm not.</p> <p>11 Q. Are you aware of whether or not the Legislature 12 considered including any additional forms of 13 identification in SB 362?</p> <p>14 MR. FREDERICK: I object and instruct you 15 that you may answer the specific question of whether or 16 not you are aware. I caution you not to reveal any 17 legislators' thought process or any communication with a 18 legislator.</p> <p>19 A. I'm not aware of any additional forms.</p> <p>20 Q. (By Ms. Berkower) Are you aware of any analysis 21 about which registered voters did not possess one of the 22 required forms of ID identified in SB 362?</p> <p>23 MR. FREDERICK: Objection, legislative 24 privilege. You may answer the specific question of 25 whether or not you were aware. Do not reveal the</p>	<p style="text-align: center;">155</p> <p>1 just leave it at that.</p> <p>2 MR. FREDERICK: Objection, vague.</p> <p>3 A. After the filing of it, yes. Not prior to the 4 filing of the legislation.</p> <p>5 Q. (By Ms. Berkower) So not during the development 6 of the bill?</p> <p>7 A. No, not that I remember.</p> <p>8 Q. Janice McCoy testified in her deposition that 9 she spoke with your office on a daily basis as SB 362 10 was being developed. Do you remember that at all?</p> <p>11 MR. FREDERICK: Objection, it assumes 12 facts not in evidence.</p> <p>13 A. She didn't talk to me before filing it.</p> <p>14 Q. (By Ms. Berkower) After she filed it, did she 15 talk to you regularly?</p> <p>16 A. I have a problem with "regularly," but yes, we 17 had -- we did talk about the legislation.</p> <p>18 Q. About how frequently?</p> <p>19 A. When we were getting ready to refer the bill 20 and hear the bill, I would talk to her, but it was not a 21 regular -- I mean, I don't think you can say once a 22 week, because it might have been once a week and then 23 three times in one day. And so it wasn't a rhythmic 24 kind of communication.</p> <p>25 Q. So did the frequency of your contact with her</p>
<p style="text-align: center;">154</p> <p>1 contents of any communication or anyone's thought 2 process.</p> <p>3 A. I'm not aware of it.</p> <p>4 Q. (By Ms. Berkower) Not aware of any such 5 analysis?</p> <p>6 A. I'm not aware of it.</p> <p>7 Q. Did you conduct or instruct anyone else to 8 conduct an analysis of the impact of SB 362 on minority 9 voters?</p> <p>10 MR. FREDERICK: Objection, legislative 11 privilege and instruct you not to answer.</p> <p>12 A. I can't answer that.</p> <p>13 Q. (By Ms. Berkower) If SB 362 had been passed and 14 been signed into law, would it have been subject to the 15 requirements of the Voting Rights Act, Section 5?</p> <p>16 A. As I understand the Voting Rights Act, yes, it 17 would.</p> <p>18 Q. Did anyone ever direct you not to analyze the 19 impact of SB 362 on minority voters?</p> <p>20 A. No.</p> <p>21 MR. FREDERICK: Objection, legislative 22 privilege and instruct you not to answer.</p> <p>23 Q. (By Ms. Berkower) Is it fair to say that your 24 office was in very close contact with Janice McCoy 25 during the development of SB 362 and while the -- well,</p>	<p style="text-align: center;">156</p> <p>1 or Senator Fraser's office depend on whether a committee 2 or the full Senate was going to actively consider 3 SB 362?</p> <p>4 A. I would say it was more about, do we have all 5 of the paperwork necessary. Have you talked to all of 6 the senators. Have you -- more procedural questions and 7 comments, which we typically do with all legislation, 8 working with senators to get their legislative packages 9 passed.</p> <p>10 Q. So she would contact you concerning procedural 11 matters?</p> <p>12 A. Yes. We have all our paperwork. We're ready 13 to go now. That sort of thing.</p> <p>14 Q. Did she contact you about the substance of the 15 bill?</p> <p>16 MR. FREDERICK: I'll object only to the 17 extent it would call for the substance of your 18 conversations, but as to whether or not she did, you may 19 answer.</p> <p>20 A. Not prior to filing the legislation. We may 21 have had conversations about amendments after -- as the 22 bill was going through the process.</p> <p>23 Q. (By Ms. Berkower) What were those 24 conversations?</p> <p>25 MR. FREDERICK: We'll object on the basis</p>



<p style="text-align: center;">157</p> <p>1 of legislative privilege and instruct you not to answer. 2 A. I can't answer that question. 3 Q. (By Ms. Berkower) But these were -- to be 4 clear, these are substantive conversations as well as 5 procedural conversations? 6 A. Yes, I think so. 7 Q. Outside of the communications between the 8 Lieutenant Governor's Office and Senator Fraser's 9 office, are you aware of any other communications that 10 your office had during the development or drafting of 11 SB 362?</p> <p>12 MR. FREDERICK: Objection, vague. You may 13 answer. 14 A. I'm not aware of any draft -- any conversations 15 during drafting. I think there were conversations with 16 other offices during the development of the bill. 17 Q. (By Ms. Berkower) In your opinion, do you 18 believe that states covered by Section 5 of the Voting 19 Rights Act need not conduct any analysis of the impact 20 of photo voter ID laws on minority voters? 21 MR. FREDERICK: Objection, relevance. 22 A. I don't -- I don't see that as a requirement 23 for the states to do that, but I'm not an expert on the 24 Voting Rights Act either. 25 Q. (By Ms. Berkower) Did the Supreme Court's</p>	<p style="text-align: center;">159</p> <p>1 you to reveal anyone's specific motivation for the bill 2 or subjective personal intent. But subject to that, you 3 may answer. 4 A. It's my understanding that it was designed to 5 protect the integrity of the election system and ensure 6 that we uphold One Person, One Vote. 7 Q. (By Ms. Berkower) How did it do that? 8 A. It required at least stronger identification 9 than the current system for voting. 10 Q. And was the law designed to target any 11 particular problem? 12 A. Not that I'm aware of. 13 Q. Was it designed to target in-person voter 14 impersonation? 15 A. I think that was part of the justification for 16 the bill, yes. 17 Q. What was the rest of the justification for the 18 bill? 19 A. Again, to enhance voter confidence in the 20 system. 21 Q. And how did it do that? 22 A. I think by making people feel like their vote 23 mattered and that it was an honest vote with a system 24 that had integrity. 25 Q. How did it make them feel that their vote</p>
<p style="text-align: center;">158</p> <p>1 decision in the Indiana voter ID case change your view 2 on that?</p> <p>3 MR. FREDERICK: Objection, relevance. 4 A. No. 5 Q. (By Ms. Berkower) Does your answer explain why 6 the public record contains no indication of any serious 7 effort to determine the impact of SB 362 on minority 8 voters? 9 MR. FREDERICK: Objection, assumes facts 10 not in evidence. Objection, relevance, and objection, 11 argumentative. 12 A. In the normal course of business of handling 13 legislation on the Senate Floor, that would not 14 typically be one of the things that we accomplished or 15 did in our office. 16 Q. (By Ms. Berkower) Do you know if anybody else 17 would generally look into those issues? 18 A. I'm not aware of it. 19 Q. What was the purpose or purposes of SB 362? 20 MR. FREDERICK: We'll object and caution 21 you that based on legislative privilege and to the 22 extent that you have an understanding of the general 23 purpose of the bill, you may answer the question. 24 However, I will instruct you not to answer, on the basis 25 of legislative privilege, the extent it would require</p>	<p style="text-align: center;">160</p> <p>1 mattered? 2 A. I think that it counted as their one vote, and 3 that they knew that they were the person voting because 4 there was some additional ID required. That's my 5 personal opinion. 6 Q. So requiring some additional ID improved voter 7 confidence? 8 A. I believe so. 9 Q. Is there anything else that the law targeted? 10 Any other problems? 11 A. Not that I'm aware of. There was additional 12 education requirements, but that's -- I think that's 13 always a good thing. 14 Q. Did the law target mail-in voter fraud? 15 A. Not that I'm aware of. 16 Q. Why not? 17 MR. FREDERICK: Objection, legislative 18 privilege and instruct you not to answer. 19 A. I can't answer that. 20 Q. (By Ms. Berkower) Senator Fraser testified in 21 his deposition that before he filed SB 362, he gave 22 notice to your office. Is that accurate? 23 MR. FREDERICK: Objection, assumes facts 24 not in evidence. You may answer. 25 A. I seem to remember him calling to say he was</p>



<p style="text-align: center;">161</p> <p>1 filing voter ID legislation, yes. 2 Q. (By Ms. Berkower) Why did he do that? 3 MR. FREDERICK: Objection, legislative 4 privilege. Instruct you not to answer. 5 A. I can't answer that. 6 Q. (By Ms. Berkower) Were you involved in the 7 conversation when Senator Fraser called the Lieutenant 8 Governor's Office about filing SB 362? 9 A. I think I was. 10 Q. Do you remember the conversation? 11 A. No. 12 Q. Do you remember if Senator Fraser indicated why 13 he was filing SB 362? 14 A. No. 15 Q. Had Senator Fraser promised the Lieutenant 16 Governor that he would file SB 362? 17 A. Not that I'm aware of. 18 Q. Did the Lieutenant Governor ask Senator Fraser 19 to file SB 362? 20 MR. FREDERICK: Objection, legislative 21 privilege. Instruct you not to answer. 22 A. I can't answer that one. 23 Q. (By Ms. Berkower) Senator Fraser testified in 24 his deposition that he had an in-person meeting with the 25 Lieutenant Governor in his office regarding allowing --</p>	<p style="text-align: center;">163</p> <p>1 A. I had conversations about amendments that 2 senators didn't like, but not about the purpose of 3 Senate Bill 362. 4 Q. (By Ms. Berkower) Do you remember who the main 5 opponents were to SB 362? 6 A. My memory was that the Democratic senators 7 opposed the legislation. 8 Q. Were there any outside groups that opposed 9 SB 362? 10 A. I'm sure there were. I did not meet with them. 11 Q. Do you know why the Democratic legislators were 12 opposed to SB 362? 13 MR. FREDERICK: I'll object on the basis 14 of legislative privilege and instruct you not to answer 15 to the extent that you learned the purpose through a 16 confidential communication. 17 MS. BERKOWER: Well, I just asked if she 18 knew why -- if she knew why they were opposed. I didn't 19 ask what the substance of their opposition was. 20 MR. FREDERICK: Well, I'll instruct you 21 not to reveal the substance of any opposition, but as to 22 whether or not you know, you may answer. 23 A. No, I don't know. 24 Q. (By Ms. Berkower) Why they were opposed? 25 A. Why they were opposed.</p>
<p style="text-align: center;">162</p> <p>1 regarding whether or not nonphoto ID should be included 2 in SB 362. Do you know if that meeting occurred? 3 MR. FREDERICK: Objection, it assumes 4 facts not in evidence. You may answer. 5 A. I don't know whether or not the meeting 6 occurred. I assume so. 7 Q. (By Ms. Berkower) Do you know if you prepared 8 the Lieutenant Governor for the meeting? 9 A. No. 10 Q. Did you ever have any communications with 11 legislators who opposed SB 362 regarding the purpose of 12 SB 362? 13 MR. FREDERICK: I'll object on the basis 14 of privilege and instruct you that you may answer the 15 specific question of whether you had conversations, but 16 do not reveal the substance of those conversations. 17 A. I don't remember conversations on Senate Bill 18 362. 19 Q. (By Ms. Berkower) Conversations with? 20 A. With senators who opposed the legislation or 21 the purpose of the legislation. 22 Q. (By Ms. Berkower) So you don't remember any 23 conversations with legislators who opposed 362? 24 MR. FREDERICK: Objection, asked and 25 answered. You may answer.</p>	<p style="text-align: center;">164</p> <p>1 Q. Do you know of any election officials who were 2 opposed to SB 362? 3 A. I remember questions about implementation and 4 timeline and cost, but I don't remember strong 5 opposition by elections officials. 6 Q. Do you remember if anyone in the Executive 7 Branch opposed SB 362? 8 A. I remember concerns about implementation and 9 cost and that sort of thing, but it was implementation 10 related, not opposition to the concept. 11 Q. Did you take any steps with regard to any of 12 these concerns? 13 A. Yes. 14 Q. What did you do? 15 MR. FREDERICK: I'll object on the basis 16 of legislative privilege and instruct you not to answer 17 the question. 18 A. Okay. I can't answer that. 19 Q. (By Ms. Berkower) Did the Lieutenant Governor's 20 Office play a role in securing passage of SB 362 in the 21 Senate? 22 A. Yes, insofar as he recognized the senator, he 23 referred it to the committee, he handled the procedural 24 requirements necessary to get the bill passed. 25 Q. Did he do anything behind the scenes?</p>



<p style="text-align: center;">165</p> <p>1 MR. FREDERICK: Objection, vague. 2 A. Yeah. I'm going to have to have some more. 3 What do you mean by that? 4 Q. (By Ms. Berkower) Okay. Did the Lieutenant Governor's Office play a role in attempting to secure passage of SB 362 in the Senate outside of his procedural role as President of the Senate? 5 MR. FREDERICK: I object on the basis of legislative privilege to the extent that it would reveal any nonpublic role, thought process, or private communications. 6 To the extent you can answer generally without revealing that, you may do so. 7 A. Generally, yes. 8 Q. (By Ms. Berkower) What was that role? 9 MR. FREDERICK: The same objection and instruction. 10 A. I can't answer that question. 11 Q. (By Ms. Berkower) What procedures did the Lieutenant Governor use to ensure that SB 362 would pass the Senate? 12 MR. FREDERICK: I object on the basis of privilege to the extent -- I also object on vagueness. 13 But to the extent this seeks nonpublic communications or actions by the Lieutenant Governor, I instruct you not</p>	<p style="text-align: center;">167</p> <p>1 Q. Or actually, fourth, fifth, and sixth. 2 A. (Reading to herself). 3 Q. Have you looked at those? 4 A. Yes. 5 Q. The article quotes the Lieutenant Governor as saying, "As far as I know, I don't think the two-thirds rule is going to change," in that -- in the 2009 legislative session. 6 Do you remember the Lieutenant Governor saying that? 7 A. No, I don't. 8 Q. Do you know why he said that? 9 A. No, I don't. 10 Q. Would he be the best person to confirm whether he said that and explain why he said that? 11 MR. FREDERICK: Objection, calls for speculation. 12 A. I assume so. 13 Q. (By Ms. Berkower) All right. 14 MS. BERKOWER: I have what's going to be Exhibit 105, I guess. Some of these copies are not as good as the others. 15 Thank you. 16 (Exhibit 105 marked for identification.) 17 Q. (By Ms. Berkower) Can you turn your attention</p>
<p style="text-align: center;">166</p> <p>1 to answer on the basis of privilege. 2 A. I think that the Lieutenant Governor followed the rules, the Senate rules, as he is allowed to do, in order to have the legislation heard in committee and then passed on the Senate Floor. 3 Q. Anything else that he did? 4 MR. FREDERICK: The same instruction and objection. 5 A. Not that I'm aware of. 6 MS. BERKOWER: Do y'all want to take a five-minute break? 7 MR. FREDERICK: Sure. 8 (Recess from 11:46 a.m. to 11:54 a.m.) 9 Q. (By Ms. Berkower) So we were talking about SB 362 now, in 2009. I guess I have what will be Exhibit 104. 10 (Exhibit 104 marked for identification.) 11 Q. (By Ms. Berkower) Do you know what this is? 12 A. I'm not familiar with the article. 13 Q. Is it -- does it appear to be an article from the Dallas Morning News dated January 14, 2009? 14 A. Yes. 15 Q. Turning your attention to the fifth and sixth paragraph, can you read those, please? 16 A. Yes.</p>	<p style="text-align: center;">168</p> <p>1 -- well what is this, first? 2 A. It appears to be a -- the resolution adopting the Senate rules. 3 Q. Which legislative session is that? 4 A. For the 2009 session, 81st Legislature. 5 Q. Can you turn to Rule 5.11. 6 A. Okay. 7 Q. Do you know how this provision was adopted in the 2009 Senate rules? 8 A. The senator's caucus decide on their rules and then bring them to the Floor for adoption and full hearing with the resolution, so I assume they wrote it. 9 Q. Do you know the circumstances for adopting this particular rule? 10 A. No. I wasn't in the caucus. 11 Q. Did you hear anything about it afterwards? 12 MR. FREDERICK: Objection on legislative privilege. 13 Don't reveal the substance of any communication with the legislator or the Lieutenant Governor. Asking the specific question of whether or not you heard anything, you may answer that. 14 A. Yes, I did. 15 Q. What was that -- what was it that you heard? 16 MR. FREDERICK: Objection, legislative</p>



<p style="text-align: center;">169</p> <p>1 privilege.</p> <p>2 Instruct you not to answer.</p> <p>3 A. I can't answer that.</p> <p>4 Q. (By Ms. Berkower) Is this the two-thirds rule</p> <p>5 that we were talking about earlier?</p> <p>6 A. Yes. It -- it is or it's part of it. Yes.</p> <p>7 Q. For purposes of the 2009 legislature?</p> <p>8 A. Yes.</p> <p>9 Q. Turning your attention to Part D of the rule,</p> <p>10 can you read that to yourself.</p> <p>11 A. Yes.</p> <p>12 Q. What does this section do?</p> <p>13 A. It allows the Senate to go in to the Committee</p> <p>14 of the Whole and then set a special order by a majority</p> <p>15 vote of the Senate and not the two-thirds vote.</p> <p>16 Q. Does it allow that for any type of legislation?</p> <p>17 A. It is specifically for voter identification</p> <p>18 requirements.</p> <p>19 Q. So what's the effect of this section of the</p> <p>20 rule?</p> <p>21 A. The effect is to allow a special treatment of</p> <p>22 voter identification legislation.</p> <p>23 Q. Why did the rule do that?</p> <p>24 MR. FREDERICK: Objection. Calls for --</p> <p>25 calls for speculation. Objection, legislative</p>	<p style="text-align: center;">171</p> <p>1 handle legislation.</p> <p>2 Q. (By Ms. Berkower) Okay. Well, I guess, you</p> <p>3 used the term "it gives special treatment to voter ID</p> <p>4 legislation." So I was wondering what you meant by</p> <p>5 "special treatment."</p> <p>6 A. It requires a different vote count than the</p> <p>7 remainder of the bills that go through -- that step</p> <p>8 outside of the regular order of business.</p> <p>9 Q. Are you aware of any discussions among members</p> <p>10 of the legislature to make the rule specific to exempt</p> <p>11 voter ID from the two-thirds requirement?</p> <p>12 MR. FREDERICK: Object, and instruct you</p> <p>13 not to reveal the substance of any communications but</p> <p>14 you may answer whether or not you are aware.</p> <p>15 A. Yes, I am aware.</p> <p>16 Q. What was the substance of those communications?</p> <p>17 MR. FREDERICK: Object on the basis of</p> <p>18 legislative privilege, and instruct you not to answer.</p> <p>19 A. I can't answer that.</p> <p>20 Q. (By Ms. Berkower) Was the Lieutenant Governor</p> <p>21 involved any of those communications?</p> <p>22 A. Yes.</p> <p>23 Q. What was his involvement in those</p> <p>24 communications?</p> <p>25 MR. FREDERICK: Object on legislative</p>
<p style="text-align: center;">170</p> <p>1 privilege.</p> <p>2 Instruct you not to answer.</p> <p>3 A. Okay. I can't answer that.</p> <p>4 Q. What was the purpose of exempting voter ID</p> <p>5 requirements from the rule?</p> <p>6 MR. FREDERICK: Same objection.</p> <p>7 Instruct you not to answer.</p> <p>8 A. I can't answer that.</p> <p>9 Q. (By Ms. Berkower) Isn't it true that the rule</p> <p>10 was only changed for purposes of passing a voter ID law?</p> <p>11 MR. FREDERICK: Objection, legislative</p> <p>12 privilege.</p> <p>13 Instruct you not to answer.</p> <p>14 A. I can't answer that.</p> <p>15 Q. (By Ms. Berkower) Do you know if the -- why was</p> <p>16 there special treatment for voter ID law?</p> <p>17 MR. FREDERICK: Objection, calls for</p> <p>18 speculation. Object to the extent it calls for -- to</p> <p>19 the extent this question calls for thought processes or</p> <p>20 confidential privileged communications.</p> <p>21 I would instruct you not to answer. So</p> <p>22 unless you can do so without revealing privileged</p> <p>23 matters, I'll instruct you not to answer.</p> <p>24 A. The senators vote on their rules, not the</p> <p>25 Lieutenant Governor, and they choose how they want to</p>	<p style="text-align: center;">172</p> <p>1 privilege to the extent it calls for you to reveal the</p> <p>2 substance of any conversation between the Lieutenant</p> <p>3 Governor and another legislator or staff.</p> <p>4 A. I can't answer that.</p> <p>5 Q. (By Ms. Berkower) Who specifically was involved</p> <p>6 in those conversations?</p> <p>7 A. My memory is that Senator Whitmire, Senator</p> <p>8 Williams -- well, at least a half dozen senators came to</p> <p>9 tell the Lieutenant Governor they were changing the</p> <p>10 rules on this issue.</p> <p>11 Q. Why did they come to tell him that?</p> <p>12 MR. FREDERICK: Objection, calls for</p> <p>13 speculation, and object on privilege to the extent it</p> <p>14 calls for their thought process.</p> <p>15 If you know why independently of that, you</p> <p>16 may answer.</p> <p>17 A. Typically, give him a courtesy telling him when</p> <p>18 they're changing their rules.</p> <p>19 Q. (By Ms. Berkower) You mean changing the rules</p> <p>20 from the rules from the previous legislative session?</p> <p>21 A. Yeah. Anytime they change the rules.</p> <p>22 Q. Can they change the rules midway through the</p> <p>23 legislative session?</p> <p>24 A. Yes, I think they can.</p> <p>25 Q. Do you know of any time that's happened?</p>



<p>173</p> <p>1 A. Not that I can think of.</p> <p>2 Q. Were you involved in the meeting when the</p> <p>3 senators came to tell the Lieutenant Governor that they</p> <p>4 were going to change the rules for voter identification?</p> <p>5 A. Not after letting them in the room.</p> <p>6 Q. Did you discuss that conversation with the</p> <p>7 Lieutenant Governor after they left?</p> <p>8 A. Yes, I think I did.</p> <p>9 Q. What did the Lieutenant Governor tell you?</p> <p>10 MR. FREDERICK: Objection, legislative</p> <p>11 privilege.</p> <p>12 Instruct you not to answer.</p> <p>13 A. I can't answer that.</p> <p>14 Q. (By Ms. Berkower) Did the Lieutenant Governor</p> <p>15 favor the rule change?</p> <p>16 MR. FREDERICK: Objection, legislative</p> <p>17 privilege.</p> <p>18 Instruct you not to answer.</p> <p>19 A. I can't answer that.</p> <p>20 Q. (By Ms. Berkower) Do you know if the Lieutenant</p> <p>21 Governor had a position on the rule change?</p> <p>22 A. Yes.</p> <p>23 Q. What was that position?</p> <p>24 MR. FREDERICK: Objection, legislative</p> <p>25 privilege.</p>	<p>175</p> <p>1 years.</p> <p>2 Q. Okay. Are you aware of any public statement</p> <p>3 that was made by any legislator regarding why the rule</p> <p>4 was changed for the class of voter ID legislation?</p> <p>5 A. Not that I remember.</p> <p>6 Q. Are you aware of any public statement made by</p> <p>7 the Lieutenant Governor regarding why the rule was</p> <p>8 changed?</p> <p>9 A. No. Other than this Dallas Morning News</p> <p>10 article that you gave me.</p> <p>11 Q. Would SB 362 have passed the Senate if it had</p> <p>12 not adopted Rule 5.11 as contained in the 2009 Senate</p> <p>13 rules?</p> <p>14 MR. FREDERICK: Objection, calls for</p> <p>15 speculation.</p> <p>16 Q. (By Ms. Berkower) You may answer.</p> <p>17 A. I don't remember the exact vote count but I</p> <p>18 think that it was along party lines and therefore would</p> <p>19 not have met the two-thirds rule. That doesn't mean</p> <p>20 that it couldn't have gone through the regular order of</p> <p>21 business and been handled that way.</p> <p>22 Q. Using a two-thirds majority, you mean?</p> <p>23 A. No. You don't have to. You can go in the</p> <p>24 regular order of business.</p> <p>25 Q. Oh, okay. Given that was Number 362, is that a</p>
<p>174</p> <p>1 Instruct you not to answer.</p> <p>2 Q. (By Ms. Berkower) How many other times has the</p> <p>3 two-thirds rule been suspended during the time in which</p> <p>4 you've worked in this -- for the Lieutenant Governor?</p> <p>5 A. Oh, thousands of times. It's -- the suspension</p> <p>6 of the -- wait a minute, let me make sure I understand</p> <p>7 the question. How many times have the senators voted to</p> <p>8 suspend the regular order of business? So it's a -- are</p> <p>9 you asking how many times they're using the two-thirds</p> <p>10 rule or let me ask -- will you --</p> <p>11 Q. I can restate. Sorry.</p> <p>12 A. Yes.</p> <p>13 Q. Do you know of any other instances in which a</p> <p>14 particular type of legislation was specifically exempted</p> <p>15 from the two-thirds requirement by the Senate rules?</p> <p>16 A. Yes. In the history of the Senate, I know it's</p> <p>17 been done for re-districting at some point, I don't</p> <p>18 remember when. But that's my memory, it's been done for</p> <p>19 re-districting.</p> <p>20 Q. Do you know when it was re-done for</p> <p>21 re-districting?</p> <p>22 A. No, I don't remember.</p> <p>23 Q. Was it done in the past five years for</p> <p>24 re-districting?</p> <p>25 A. My guess is no. Probably the last twenty</p>	<p>176</p> <p>1 realistic option?</p> <p>2 A. Honestly, if you sat there and gaveled through</p> <p>3 the whole thing, it's possible.</p> <p>4 Q. Have you seen that happen before?</p> <p>5 A. Not in the Senate.</p> <p>6 Q. Where --</p> <p>7 A. You do sometimes in the House.</p> <p>8 Q. Are you aware of any other communications</p> <p>9 related to any other real modifications to the 2009</p> <p>10 Senate rules with regard to voter ID bills?</p> <p>11 A. Not that I remember.</p> <p>12 Q. Was SB 362 considered by any Senate committees?</p> <p>13 A. Yes.</p> <p>14 Q. Which one?</p> <p>15 A. It went to the Committee of the Whole.</p> <p>16 Q. Is that the usual procedure?</p> <p>17 MR. FREDERICK: Objection, vague;</p> <p>18 objection, form.</p> <p>19 A. It's a usual procedure to send the bill to</p> <p>20 committee.</p> <p>21 Q. (By Ms. Berkower) Why did the bill get sent</p> <p>22 directly the Committee of the Whole?</p> <p>23 MR. FREDERICK: Objection to the extent it</p> <p>24 calls for the Lieutenant Governor or any legislator's</p> <p>25 thought process or any privileged communications.</p>



<p>177</p> <p>1 I instruct you not to answer. If you know 2 independent of that and can answer without revealing it, 3 you may answer.</p> <p>4 A. The Lieutenant Governor chose to send it to the 5 Committee of the Whole. It is consistent with the Rule 6 D, and predictable from the senators because they put it 7 in their rules.</p> <p>8 Q. (By Ms. Berkower) Uh-huh.</p> <p>9 A. So, one could argue that he was following the 10 rules.</p> <p>11 Q. You mean the rules directed him to send it?</p> <p>12 A. They don't directly direct him to, however, the 13 pathway is pretty clear right here.</p> <p>14 Q. So the senators themselves indicated they 15 wanted it as part of the rule for voter ID legislation 16 to be considered primarily by the Committee of the 17 Whole?</p> <p>18 A. The senators wrote that rule not the Lieutenant 19 Governor.</p> <p>20 Q. Under the rules, did the Senate -- did the -- 21 excuse me -- the Lieutenant Governor have the authority 22 to refer voter ID legislation to other committees?</p> <p>23 A. Yes, he did.</p> <p>24 Q. But he still chose to refer it to the Committee 25 of the Whole?</p>	<p>179</p> <p>1 MR. FREDERICK: Objection, misstates prior 2 testimony.</p> <p>3 You may answer.</p> <p>4 A. I did not say that. I think the senators 5 contemplated that bill going to the Committee of the 6 Whole, but it doesn't direct him to send it to the 7 Committee of the Whole. The rule does not --</p> <p>8 Q. Do you know why -- oh, excuse me.</p> <p>9 Do you know why the senators might have 10 wanted the bill to go straight to the Committee of the 11 Whole?</p> <p>12 MR. FREDERICK: Objection, calls for 13 speculation. Objection to the extent it calls for the 14 thought process of any legislator.</p> <p>15 You may, however, answer the specific 16 question whether or not you know why.</p> <p>17 A. I don't know why.</p> <p>18 Q. (By Ms. Berkower) What was the purpose of 19 assigning SB 362 to the Committee of the Whole?</p> <p>20 MR. FREDERICK: I'll object to the extent 21 it calls for any legislator or Lieutenant Governor's 22 thought process or any privileged communications.</p> <p>23 But if you can identify a purpose without 24 revealing that, you may do so.</p> <p>25 A. Generally, the Lieutenant Governor sends a bill</p>
<p>178</p> <p>1 A. Yes, he did.</p> <p>2 Q. Why didn't it go to the State Affairs 3 Committee?</p> <p>4 MR. FREDERICK: Objection, legislative 5 privilege.</p> <p>6 Instruct you not to answer, unless you can 7 do so without revealing mental impressions, thought 8 process, or privileged communications.</p> <p>9 A. I don't think I answer that.</p> <p>10 Q. (By Ms. Berkower) Ms. McCoy said in her 11 deposition it was unusual for a bill to go straight to 12 the Committee of the Whole. Do you agree with that?</p> <p>13 MR. FREDERICK: Objection, relevance.</p> <p>14 Objection, assumes facts not this evidence.</p> <p>15 You may answer.</p> <p>16 A. The Committee of the Whole is unusual, however, 17 it is used when the Lieutenant Governor wants to ensure 18 that all 31 senators hear the same information, the same 19 testimony, the same public input, and that was the case 20 with this legislation as it had been with other 21 legislation during his time as Lieutenant Governor.</p> <p>22 Q. (By Ms. Berkower) I thought you said, though, 23 that the senators indicated that they wanted it to go 24 straight to the Committee of the Whole through passing 25 Rule 5.11?</p>	<p>180</p> <p>1 to the Committee of the Whole when he wants to ensure 2 that all 31 senators have the exact same access to the 3 exact same information, the exact same testimony, that 4 exact same opportunity to ask witnesses questions, which 5 is not the case when it goes to a smaller committee. 6 And when he wants to sure -- make sure that everybody 7 has the same information access, it's a fairness issue.</p> <p>8 Q. (By Ms. Berkower) Do you know why he thought it 9 was important for SB 362 to go to the Committee of the 10 Whole?</p> <p>11 MR. FREDERICK: Objection, to the extent 12 it calls for his -- the Lieutenant Governor's thought 13 process.</p> <p>14 You may, however, answer the specific 15 question whether or not you know why.</p> <p>16 A. I don't know why.</p> <p>17 Q. (By Ms. Berkower) What was the Lieutenant 18 Governor's role during the consideration of SB 362 when 19 it was before the Committee of the Whole?</p> <p>20 A. The procedure for going in to the Committee of 21 the Whole means that -- requires that the Lieutenant 22 Governor steps down from the dais and actually functions 23 as one the senators. And so then another senator 24 manages the Committee of the Whole and that senator is 25 designated by the Lieutenant Governor. And the</p>



<p style="text-align: center;">181</p> <p>1 Lieutenant Governor can act as a senator or committee 2 member for the period of consideration under the 3 Committee of the Whole. 4 Q. You said he can act? 5 A. Uh-huh. 6 Q. Does the senator who is now on the dais get to 7 act as a full senator? 8 A. Yes, I think so. 9 Q. So that senator doesn't lose any of his powers? 10 A. No, I don't think so. No. 11 Q. How is a hearing organized for when the Senate 12 is meeting in the Committee of the Whole? Who calls the 13 meeting? 14 A. Oh, well, the Lieutenant Governor has to refer 15 the bill to the Committee of the Whole. At that point, 16 then he has to designate somebody to chair the Committee 17 of the Whole. Next the Chair of the Committee of the 18 Whole has to call the Senate in to the committee and 19 they have to adopt rules for -- to operate under, for 20 the purposes of the committee. And then they conduct a 21 regular committee hearing. 22 Q. How does -- who decides which witnesses are 23 heard from? 24 A. I guess it's a responsibility of the Chair of 25 the committee, but the senators were asked who they'd</p>	<p style="text-align: center;">183</p> <p>1 A. Yes, I believe so. 2 Q. Were you personally involved in selecting any 3 witnesses who testified with regard to SB 362? 4 A. Not that I remember. 5 Q. Did you attend the committee meeting for the 6 Committee of the Whole for SB 362? 7 A. Parts of it, yes. I was in and out. 8 Q. Do you remember it? 9 A. Vaguely. 10 Q. During the debate on SB 362, did anyone raise 11 concerns about its impact on minority voters? 12 A. I don't remember that. They could have. 13 Q. But you don't remember any? 14 A. I don't remember the testimony. 15 Q. Do you remember if the Lieutenant Governor 16 responded in any way to concerns raised about the impact 17 on minority voters? 18 A. Not that I remember. 19 Q. Do you know if SB 362 changed at all in 20 response to concerns about its impact on minority 21 voters? 22 A. I don't remember it. 23 MS. BERKOWER: I guess this is going to be 24 Exhibit 33 previously marked. 25 (Exhibit 33 remarked for this deposition.)</p>
<p style="text-align: center;">182</p> <p>1 like to have testimony -- testify and, of course, 2 there's public testimony so anybody who wanted to come 3 speak, can. 4 Q. When the Senate is meeting as the Committee of 5 the Whole, does that mean the Lieutenant Governor also 6 gets to call witnesses? 7 A. You know, "call witnesses" is a not a term we 8 typically use. 9 Q. Invite witnesses? 10 A. Typically, it's the Chair of the Committee that 11 determines what witnesses are invited and not the 12 members of the Committee that ask witnesses. But we did 13 help call people to come testify. 14 Q. For SB 362? 15 A. I know we did with 14, I don't know if we did 16 with 362. 17 Q. Does Lieutenant Governor get to recommend 18 certain witnesses when the Senate is meeting in the 19 Committee of the Whole? 20 A. I think all senators can recommend. 21 Q. But it's at the discretion of whoever's 22 presiding whether or not to call them? 23 A. I think that's correct. 24 Q. Do you know if any witnesses from groups 25 representing minority voters were heard from on SB 362?</p>	<p style="text-align: center;">184</p> <p>1 Q. (By Ms. Berkower) Do you know what this is? 2 A. It's the Senate Journal for Wednesday March 18, 3 2009. 4 Q. Do you remember if you were in attendance that 5 day? 6 A. Typically, I'm on and off the Floor lots and 7 lots of times during the course of the day, so I'm sure 8 I was present but not on the Floor the whole time. I 9 know I was at work that day. 10 Q. How do you know that? 11 A. Because I didn't ever miss a day of the 12 session. 13 Q. That's a good way to remember. 14 A. Yes. 15 Q. Can you turn your attention to Page 591, 16 please. Do you see there's something, an entry that 17 says it's the Statement Regarding Votes Cast on Senate 18 Bill 362? 19 A. Yes. 20 Q. Do you remember this statement? 21 A. No, I don't. 22 Q. Do you know what it is now that you have 23 reviewed it? 24 A. Yes. 25 Q. What is it?</p>



<p style="text-align: center;">185</p> <p>1 A. It's a statement that Senator West submitted on 2 behalf of -- one, two, three, four, five, six, seven, 3 eight, nine -- ten democratic senators.</p> <p>4 Q. And does the statement specify that eight of 5 those democratic senators are ethnic minorities?</p> <p>6 A. Yes.</p> <p>7 Q. What was the content of this statement?</p> <p>8 A. He opposed the -- Senator West authored the 9 statement opposing the process for handling the voter ID 10 legislation.</p> <p>11 Q. Does the statement note that all of the ethnic 12 minorities in the Senate opposed that bill?</p> <p>13 A. Yes.</p> <p>14 Q. Why do you think these senators felt the need 15 to submit, for the record, a statement that all racial 16 and ethnic minorities voted against the voter ID 17 legislation?</p> <p>18 MR. FREDERICK: Objection, calls for 19 speculation. Objection, based on privilege, to the 20 extent that this would call for you to you reveal the 21 substance of any conversation with one of these 22 senators.</p> <p>23 A. I don't know.</p> <p>24 Q. (By Ms. Berkower) What is your opinion of their 25 unified opposition to SB 362?</p>	<p style="text-align: center;">187</p> <p>1 Governor's staff, I believe that's privileged. 2 I would instruct her not to answer.</p> <p>3 A. I can't answer that.</p> <p>4 Q. (By Ms. Berkower) Do you have an opinion as to 5 whether or not these senators' opposition was genuine?</p> <p>6 MR. FREDERICK: Objection, 7 relevance. Same objection on privilege. 8 Instruct you not to answer.</p> <p>9 A. Sorry, I can't answer that.</p> <p>10 MS. BERKOWER: I just asked if she has an 11 opinion, not what it was.</p> <p>12 MR. FREDERICK: But you're asking the same 13 thing. I mean, you're asking for an opinion.</p> <p>14 MS. BERKOWER: I said, "Do you have an 15 opinion concerning whether these minority senators' 16 concerns were genuine," not "what was your opinion."</p> <p>17 MR. FREDERICK: Fair enough. I will 18 object on the grounds of relevance.</p> <p>19 But you may answer the question whether or 20 not you have an opinion.</p> <p>21 A. I don't have an opinion about whether or not 22 their concerns as expressed in this statement are 23 legitimate or that they believed in them.</p> <p>24 Q. (By Ms. Berkower) Do you believe they were 25 acting in good faith in raising concerns about the</p>
<p style="text-align: center;">186</p> <p>1 MR. FREDERICK: Objection, relevance.</p> <p>2 A. We frequently have votes where members disagree 3 with the -- with the way -- with a bill. So we 4 frequently have a non-unanimous bill. It happens.</p> <p>5 Q. (By Ms. Berkower) Do you ever have a bill where 6 all of the ethnic minorities of the Senate vote together 7 with and submit a statement that they all voted against 8 this particular legislation together?</p> <p>9 THE WITNESS: You want to say --</p> <p>10 MR. FREDERICK: Objection, relevance.</p> <p>11 But you may answer.</p> <p>12 A. I am -- I am sure that we have had numerous 13 bills where all minorities voted against them. However, 14 the statement in the Journal is unusual.</p> <p>15 Q. (By Ms. Berkower) Do you -- did you believe 16 that these senators' concerns about the impact of the 17 bill on minority voters was genuine?</p> <p>18 MR. FREDERICK: Objection. Objection, 19 relevance and objection based on legislative privilege.</p> <p>20 I instruct you not to answer the question.</p> <p>21 MS. BERKOWER: Well, I just asked if she 22 believed that their concerns were genuine.</p> <p>23 MR. FREDERICK: Well, to the extent, 24 that's asking for her thought process at the time while 25 the bill is pending, as member of the Lieutenant</p>	<p style="text-align: center;">188</p> <p>1 impact of the bill on minority voters?</p> <p>2 MR. FREDERICK: Objection, relevance.</p> <p>3 Objection, legislative privilege.</p> <p>4 Instruct you not to answer.</p> <p>5 A. I can't answer that.</p> <p>6 Q. (By Ms. Berkower) Did you have any concerns 7 that if the state did not respond to these minority 8 senators' concerns, it might threaten the preclearance 9 of SB 362?</p> <p>10 MR. FREDERICK: Objection, relevance.</p> <p>11 Objection, legislative privilege.</p> <p>12 Instruct you not to answer.</p> <p>13 A. I can't answer that.</p> <p>14 MS. BERKOWER: I just asked if she had 15 concerns, not what the concerns were.</p> <p>16 MR. FREDERICK: Yeah. I'll stick to the 17 instruction. I mean, the question implies the substance 18 of the concerns, so answering would reveal the substance 19 of her thought process.</p> <p>20 So I'll instruct you not to answer the 21 question on the basis of legislative privilege.</p> <p>22 Q. (By Ms. Berkower) Are you going to answer?</p> <p>23 A. No.</p> <p>24 Q. Was it true that some legislators and members 25 of the public stayed up all night during consideration</p>



<p style="text-align: center;">189</p> <p>1 of SB 362?</p> <p>2 A. Yes.</p> <p>3 Q. Why do you think there was such strong</p> <p>4 opposition to SB 362?</p> <p>5 MR. FREDERICK: Objection, relevance.</p> <p>6 Q. (By Ms. Berkower) You may answer.</p> <p>7 A. I think, at the point -- at this point in the</p> <p>8 legislative session, after several versions of this</p> <p>9 legislation, that the -- that both parties were actively</p> <p>10 opposed -- you know, working the members, but I did not</p> <p>11 participate in any of that -- those conversations. It</p> <p>12 was my impression that both the Democratic Party and the</p> <p>13 Republican Party were pushing their members to vote</p> <p>14 accordingly.</p> <p>15 Q. When you said "working the members," what do</p> <p>16 you mean by that?</p> <p>17 A. Contacting them to ask them to vote either for</p> <p>18 the legislation or against the legislation.</p> <p>19 Q. And when you say the Democratic Party and</p> <p>20 Republican Party, do you mean the Democratic Party of</p> <p>21 Texas and the Republican Party of Texas?</p> <p>22 A. Yes.</p> <p>23 Q. Anybody else?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Do you know why the parties were asking their</p>	<p style="text-align: center;">191</p> <p>1 advance. And I just don't remember what they all were,</p> <p>2 but, yes.</p> <p>3 Q. Did any of them get included, do you know?</p> <p>4 A. Yes, obviously. It's listed here.</p> <p>5 Q. Do you know which ones got included?</p> <p>6 A. No. I don't remember what the amendments did.</p> <p>7 Q. Do you know if any of the amendments addressed</p> <p>8 concerns of minority legislators and minority voters?</p> <p>9 MR. FREDERICK: Object on the basis of</p> <p>10 privilege.</p> <p>11 But you may answer whether or not you</p> <p>12 know.</p> <p>13 A. I just don't remember the amendments. No, I</p> <p>14 don't know.</p> <p>15 Q. (By Ms. Berkower) Did you have any role once SB</p> <p>16 362 was referred to the house?</p> <p>17 A. No.</p> <p>18 Q. Did the Lieutenant Governor?</p> <p>19 A. No. He may have told the Speaker it was on its</p> <p>20 way, but beyond that, no.</p> <p>21 Q. Does the Lieutenant Governor usually have a</p> <p>22 role in Senate bills that get sent to the House?</p> <p>23 A. No.</p> <p>24 Q. What happened to SB 362 in the House?</p> <p>25 A. The vote was considered in public hearing and</p>
<p style="text-align: center;">190</p> <p>1 members to vote in a particular way?</p> <p>2 MR. FREDERICK: Objection, calls for</p> <p>3 speculation.</p> <p>4 You may answer.</p> <p>5 A. I do not know.</p> <p>6 Q. (By Ms. Berkower) Were there any amendments to</p> <p>7 the SB 362 during the Senate Floor consideration?</p> <p>8 A. I don't remember.</p> <p>9 (Exhibit 106 marked for identification.)</p> <p>10 Q. (By Ms. Berkower) Do you know what this is?</p> <p>11 A. Yes.</p> <p>12 Q. What is it?</p> <p>13 A. This is the legislative history for Senate Bill</p> <p>14 362.</p> <p>15 Q. Does it refresh your memory as to whether or</p> <p>16 not there are any amendments to SB 362 during Floor</p> <p>17 consideration?</p> <p>18 A. Yes. This reported favorably without</p> <p>19 amendments, so, yes. No, now, I remember. They did not</p> <p>20 amend it in committee, they said they would offer</p> <p>21 amendments on the Floor.</p> <p>22 Q. Do you remember any amendments that were made</p> <p>23 on the Floor?</p> <p>24 A. I know that there are a group of them</p> <p>25 submitted, and they were distributed to the senators in</p>	<p style="text-align: center;">192</p> <p>1 then it was sent to calendars and it was placed on the</p> <p>2 major state calendar, but it was the very end of the</p> <p>3 session, and so the bill died. It was not heard on the</p> <p>4 House Floor.</p> <p>5 Q. So just to close a loop: With the exception of</p> <p>6 SB 362, are you aware of any other election-related</p> <p>7 bills that the Lieutenant Governor referred directly to</p> <p>8 the Committee of the Whole?</p> <p>9 MR. FREDERICK: Objection, vague.</p> <p>10 But you may answer.</p> <p>11 A. I don't remember any election-related bills. I</p> <p>12 know there was school finance that went. Maybe some tax</p> <p>13 stuff went to the Committee of the Whole. But I don't</p> <p>14 remember elections.</p> <p>15 Q. (By Ms. Berkower) And how common or uncommon is</p> <p>16 it for a bill to be referred directly to the Committee</p> <p>17 of the Whole?</p> <p>18 A. It's -- it's not common but it is done.</p> <p>19 Q. In what circumstances is it usually done?</p> <p>20 A. As I answered earlier, when for some reason or</p> <p>21 another the Lieutenant Governor feels it's important for</p> <p>22 all of the senators to have the same information at the</p> <p>23 same time and have the opportunity to examine all the</p> <p>24 witnesses, which does not happen in a committee process</p> <p>25 where not all senators are present on the committee.</p>



<p style="text-align: center;">193</p> <p>1 MS. BERKOWER: I think we can take a lunch 2 break now if you guys want.</p> <p>3 MR. FREDERICK: Sure.</p> <p>4 MS. BERKOWER: Like a half hour.</p> <p>5 Go off the record.</p> <p>6 (Recess from 12:26 p.m. to 1:06 p.m.)</p> <p>7 Q. (By Ms. Berkower) Okay. So just a couple more 8 questions about SB 362.</p> <p>9 A. Okay.</p> <p>10 Q. And then we'll move on. Do you know of any 11 communications regarding SB 362 and the adverse impact 12 it may have on minority voters?</p> <p>13 MR. FREDERICK: Object to the extent it 14 calls for the substance of communications based on 15 legislative privilege.</p> <p>16 But as to the question of whether or not 17 you're aware, you may answer.</p> <p>18 A. Communications with -- on -- not that I 19 remember.</p> <p>20 Q. (By Ms. Berkower) Who is Jennifer Fagan?</p> <p>21 A. She is the committee coordinator. She's in 22 charge of the State Affairs Committee.</p> <p>23 Q. Is she a lawyer?</p> <p>24 A. Yes, I believe she is.</p> <p>25 Q. Does she work for a particular legislator?</p>	<p style="text-align: center;">195</p> <p>1 legislative session ended, were you involved in any 2 discussions concerning plans to introduce another voter 3 ID bill in the next legislative session?</p> <p>4 A. I probably should have looked this up. I don't 5 remember if we charged State Affairs with studying voter 6 ID after the 2007 session or after the 2009 session. We 7 did it one of those times and I just didn't double 8 check, so it could be. I mean, I don't remember if that 9 was after the 7 session or the 9 session.</p> <p>10 Q. And when you say "you charged the State Affairs 11 Committee," what do you mean by that?</p> <p>12 A. The Lieutenant Governor issued an interim 13 committee charge to the State Affairs Committee asking 14 them to study voter ID. It's a longer charge than that, 15 but that's the substance of it.</p> <p>16 Q. Is the idea that the State Affairs Committee 17 would have some sort of recommendation at the end?</p> <p>18 A. Yes. All interim committee charges are issued 19 with the assumption that the committees will make 20 recommendations or issue a statement that there doesn't 21 need to be any change to the law.</p> <p>22 Q. Do they ever draft the actual legislation 23 themselves?</p> <p>24 A. Yes.</p> <p>25 Q. So is it possible that at the end of the</p>
<p style="text-align: center;">194</p> <p>1 A. Yes, she works for Senator Duncan.</p> <p>2 Q. So does she have a dual role as an employee of 3 the committee or she just works for him and he's on the 4 committee?</p> <p>5 A. He's the chair of the committee and she works 6 for him. So she is his staff person that manages the 7 committee.</p> <p>8 Q. Oh, okay. So do you know if anyone else in the 9 Lieutenant Governor's Office had communications with her 10 or anybody else concerning the impact that SB 362 may 11 have had on minority voters?</p> <p>12 MR. FREDERICK: I'll object to the extent 13 it calls for the substance of the communication, but to 14 the extent it asks whether you were aware, you may 15 answer.</p> <p>16 A. I'm not aware of the communication.</p> <p>17 Q. (By Ms. Berkower) What, if any, steps did -- 18 were taken by the Lieutenant Governor's Office in 2009 19 to determine if HB 362 had an adverse impact on minority 20 voters?</p> <p>21 MR. FREDERICK: Objection, legislative 22 privilege.</p> <p>23 Instruct you not to answer.</p> <p>24 A. I can't answer that.</p> <p>25 Q. (By Ms. Berkower) Okay. After the 2009</p>	<p style="text-align: center;">196</p> <p>1 interim charge, the committee would have some sort of 2 new piece of legislation to introduce?</p> <p>3 A. That's the purpose of interim committee 4 charges, is that, if there's an opportunity to prepare 5 materials during the interim when people are not really 6 busy and that -- that staff work and the background 7 research is done during that period of time.</p> <p>8 Q. Okay. How -- and how does the Lieutenant 9 Governor decide which committee will be studying a 10 particular issue?</p> <p>11 MR. FREDERICK: Objection, privilege to 12 the extent it calls for his thought process.</p> <p>13 But if you can answer, generally, without 14 revealing that, you may do so.</p> <p>15 A. Generally, he sends charges related to a 16 subject matter to the committee that would deal with 17 that subject matter if legislation was filed on that 18 issue.</p> <p>19 Q. (By Ms. Berkower) Has the Committee of the 20 Whole ever been given an interim charge?</p> <p>21 A. No, not that I'm aware of.</p> <p>22 Q. Why not?</p> <p>23 MR. FREDERICK: Objection, calls for 24 speculation. And I'll object that it calls for 25 privileged matter.</p>



<p style="text-align: center;">197</p> <p>1 But if you can answer without revealing 2 that, you may answer.</p> <p>3 A. The Committee of the Whole doesn't have 4 standing staff. It's not a standing committee that 5 operates during every session and, therefore, there's no 6 one there to manage any background research during an 7 interim.</p> <p>8 Q. (By Ms. Berkower) So if -- if the Committee of 9 the Whole considered a bill during the regular session, 10 would the Lieutenant Governor then have to decide to 11 assign an interim charge to a different committee?</p> <p>12 A. No. I assume he has the ability to charge the 13 Committee of the Whole with studying something as well. 14 It's not prohibited in the rules.</p> <p>15 Q. But it's never happened, to your knowledge?</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. And doesn't sound like it would be very 18 practical?</p> <p>19 A. That's my thought.</p> <p>20 Q. So after the 2009 legislative session ended, 21 did you speak to anyone else in the Lieutenant 22 Governor's Office about a subsequent voter ID bill to be 23 introduced in the next legislative session?</p> <p>24 A. Not that I remember. Unless it was an interim 25 committee charge during that time. I'm sorry, I didn't</p>	<p style="text-align: center;">199</p> <p>1 A. Yeah, I mean, during the course of looking at 2 all the voter ID bills, I think there's, besides the 3 people who have been proponents of legislation have said 4 we need to have a process that ensures the integrity of 5 the voting process, One Person, One Vote, and you know 6 that the person making the vote is the person whose name 7 is on the voter registration rolls, and that that 8 enhances the integrity of the process. And then 9 opponents to the process have generically said not 10 everybody has an ID; therefore, we shouldn't keep them 11 from voting just because they don't have an ID.</p> <p>12 Q. Did any of these arguments impact your views on 13 any future voter ID legislation that may be introduced?</p> <p>14 MR. FREDERICK: Objection, legislative 15 privilege.</p> <p>16 Instruct you not to answer.</p> <p>17 MS. BERKOWER: I asked if it impacted, not 18 how it impacted.</p> <p>19 MR. FREDERICK: Can you ask the question 20 again, please.</p> <p>21 Q. (By Ms. Berkower) I said did any of the news 22 articles -- or in so many words I said. Did any of the 23 news articles impact your views on any future voter ID 24 legislation that may be introduced?</p> <p>25 MR. FREDERICK: Same objection.</p>
<p style="text-align: center;">198</p> <p>1 check.</p> <p>2 Q. Do you know if you discussed any news articles 3 with other legislative -- sorry -- lieutenant Governor's 4 staff members about voter ID during that interim period?</p> <p>5 A. I remember reading quite a few news articles 6 following the session on voter ID, but I don't know that 7 our staff gave them to me. It may have been I just read 8 them in the clips or -- just because I read that kind 9 stuff or read legislative issues in the clips.</p> <p>10 Q. What do you remember reading about voter ID?</p> <p>11 A. I know there were a series of articles. Some 12 of them mentioned the polling data where the public was 13 generally, like, 70 percent favorable on the voter ID 14 legislation. I remember articles that were 15 pro-supportive of voter ID and articles that were 16 opposed to voter ID initiatives. That's generally all I 17 remember.</p> <p>18 Q. Do you remember the details of any of the 19 arguments in favor or against voter ID?</p> <p>20 A. Not that I can attribute to a specific news 21 article.</p> <p>22 Q. Generally, what were the arguments in favor or 23 against?</p> <p>24 MR. FREDERICK: Object to relevance.</p> <p>25 Q. (By Ms. Berkower) If you remember.</p>	<p style="text-align: center;">200</p> <p>1 You can answer whether or not they did.</p> <p>2 A. Not that I remember. But I don't think my 3 personal views are relevant. I don't sponsor or author 4 legislation.</p> <p>5 Q. (By Ms. Berkower) But you advise the Lieutenant 6 Governor on legislation, don't you?</p> <p>7 A. Mostly I provide him the information, pros and 8 cons, and he makes up his own mind.</p> <p>9 Q. But if you do research and you supervise the 10 research, don't you gather it together and pick what you 11 think is most relevant and provide that to him?</p> <p>12 MR. FREDERICK: Objection, assumes facts 13 not in evidence.</p> <p>14 A. We do provide him briefing materials on a 15 regular basis. But he makes up his own mind how he 16 feels about issues.</p> <p>17 Q. (By Ms. Berkower) So is he the only one we can 18 ask about his views on issues?</p> <p>19 MR. FREDERICK: Objection, relevance. 20 Objection, calls for speculation.</p> <p>21 A. I wouldn't presume to talk for him.</p> <p>22 Q. (By Ms. Berkower) Is he the only person who can 23 speak for him?</p> <p>24 A. I would assume so, yes.</p> <p>25 Q. Did you speak to any legislators or their staff</p>



<p style="text-align: center;">201</p> <p>1 in the interim period between the 2009 and 2011 2 legislative sessions about voter ID? 3 A. If that's when we did the interim charge, I 4 would have; but I just don't remember if it was between 5 7 -- after the 7th session or after the 9 session. 6 Q. During the interim charge that you're thinking 7 about, do you remember who you spoke with? 8 A. I would have spoken with the committee staff, 9 probably Senator Duncan as well. 10 Q. Which committee staff? 11 A. Senate State Affairs. 12 Q. Why? Is that because they were charged 13 with the -- 14 A. Yes. 15 Q. Do you remember what was discussed? 16 MR. FREDERICK: Objection. Object on the 17 basis of privilege. 18 You may identify the general subject 19 matter of the discussion but you may not reveal the 20 substance of any conversation with the staff member or 21 legislator. 22 A. Typically when I talk to people, Governor 23 Dewhurst typically issues well over a hundred charges 24 out to all of the committees, typically, in late January 25 or early February, following the legislative session.</p>	<p style="text-align: center;">203</p> <p>1 Q. He testified in his deposition that he started 2 to work on it on May 31, 2009. Do you know if that's 3 accurate? 4 MR. FREDERICK: Objection, assumes facts 5 not in evidence. 6 A. I don't -- I don't know. 7 Q. (By Ms. Berkower) Did Lieutenant Governor or 8 anyone in his office have any conversations prior to May 9 31, 2009 about SB 14? 10 A. No, not that I'm aware of. 11 Q. Did Lieutenant Governor or anyone in his office 12 have any conversations after May 31, 2009 about SB 14 13 before it was introduced? 14 A. Yes, but I need to clarify: Senator Fraser 15 introduced a piece of legislation in November, I believe 16 it was November of -- prior to the 2011 session. So it 17 would have been November 2010. And then he refiled that 18 piece of legislation as Senate Bill 14. 19 Governor Dewhurst had reserved the number 20 Senate Bill 14 and so Senator Fraser chose what he was 21 going to file, filed it, and then refiled that same 22 piece of legislation as Senate Bill 14. 23 So after the original filing of the voter 24 ID legislation, and before it was refiled as Senate Bill 25 14, he had a conversation with Governor Dewhurst who</p>
<p style="text-align: center;">202</p> <p>1 And at that point, then the committees all call and go, 2 "Who asked for this? Who asked for that? What do 3 you want us to do on this? How do you -- do we have to 4 have more hearings than one hearing? Can we have more? 5 What do we need to do? Is there something else you're 6 thinking about this? Can you give us additional 7 information?" I have those kinds of conversations with 8 people all the time and those would have been consistent 9 with what -- conversations I would have had for all of 10 the charges that went out to any committee. 11 Q. Do you know of any decisions that were made 12 concerning introduction of voter ID legislation in the 13 2011 legislative session before the session started? 14 A. No. Senator Fraser did that. 15 Q. So you were not involved in any decisions about 16 the introduction of voter ID legislation prior to the 17 2011 legislative session? 18 A. I was not. 19 Q. Was there a photo ID bill introduced in the 20 Senate in 2011? 21 A. Yes, there was. 22 Q. Was it SB 14? 23 A. Yes. 24 Q. Did Senator Fraser introduce it? 25 A. Yes.</p>	<p style="text-align: center;">204</p> <p>1 gave it the number 14, Senate Bill 14. 2 Q. Okay. So just to make sure I understand. You 3 can -- a senator can introduce -- can file legislation 4 before the opening of the legislative session? 5 A. Yes. 6 Q. What happens after that? 7 A. Okay. 8 MR. FREDERICK: Objection, vague. 9 A. Can you ask me better? 10 Q. Well, I'm sorry, sorry. I can. 11 Why did he need to refile it? 12 A. He didn't have to refile it. But the fact that 13 it had a low bill number is an indicator that it is a 14 priority for the legislative session. 15 Q. Okay. So when he filed it in November 2010, 16 did have a low bill number? 17 A. No. And that's why he refiled it -- 18 Q. Oh. 19 A. -- as Senate Bill 14. He -- the senators -- 20 the Lieutenant Governor reserves the first 20 bill 21 numbers, sometimes 25, and then he hands them out to 22 senators for specific types of bills. Sometimes the 23 senators ask for them as priority bill numbers and 24 sometimes the Lieutenant Governor asks them to file legislation on a given topic.</p>



<p style="text-align: center;">205</p> <p>1 This was a case of Senator Fraser filed 2 what he wanted to file and Governor Dewhurst asked him 3 to refile it, again, as another bill number. 4 Q. So the 1 through 25 are reserved for -- 5 A. 1 through 20. 6 Q. -- legislative priorities? 7 A. Yes. 8 Q. And Senator Fraser asked Lieutenant Governor 9 Dewhurst if he could -- 10 A. Use one of those numbers. 11 Q. -- use one of those numbers reserved for 12 legislative priorities? 13 A. Yes. 14 Q. Do you know if Lieutenant Governor Dewhurst 15 spoke with Senator Fraser before he first filed the bill 16 in November 2010? 17 A. I don't think he did. I'm not aware of that 18 conversation. 19 Q. So was the Lieutenant Governor involved in any 20 development of the bill before it was filed in November 21 2010? 22 A. No. I don't remember that. 23 Q. Was anyone else in your office? 24 A. I don't -- I don't think so. 25 Q. If someone was, who would have person have</p>	<p style="text-align: center;">207</p> <p>1 Q. What are the consequences for a bill to have 2 this designation? 3 MR. FREDERICK: Objection, vague. 4 Q. (By Ms. Berkower) What are the consequences for 5 a bill to be deemed emergency legislation -- legislative 6 emergency? 7 A. The rules allow a bill to be heard on the 8 Senate Floor in advance of the 60-day deadline, if it's 9 designated emergency by the Governor. 10 Q. Does it automatically get considered within the 11 first 60 days? 12 A. No. 13 Q. It's just permitted? 14 A. Yes. 15 Q. Did you have communications with Senator 16 Fraser's staff about the emergency -- about the 17 emergency designation? 18 A. I don't remember it, but it -- but I could 19 have. 20 Q. Do you know if Bryan Hebert had any such 21 communications with Senator Fraser's staff? 22 A. I don't. 23 Q. Do you know if Blaine Brunson had any 24 communications with Senator Fraser's staff about the 25 emergency designation?</p>
<p style="text-align: center;">206</p> <p>1 been? 2 A. Probably Bryan Hebert. 3 Q. Were you? 4 A. I was not. 5 Q. How did SB 14 come to be designated as 6 emergency legislation? 7 A. The Governor gets to decide what he determines 8 to be legislative emergencies. 9 Q. Does Lieutenant Governor have a role in that 10 process? 11 A. No, he doesn't. 12 Q. Does he ever talk to the Governor before 13 legislative emergencies are designated? 14 A. Well, he talks to the Governor frequently, and 15 I think the Governor's Office gave us a heads up they 16 were about to do it, but they didn't ask us should we do 17 that. They typically do give us some short period of 18 time heads up before it hits the press. 19 Q. Do you know how the Governor's Office decides 20 which pieces of legislation will be designated as 21 emergency legislation? 22 A. No, I don't. 23 Q. Do you know if the Lieutenant Governor asked 24 for a voter ID to be given that designation? 25 A. No, I don't.</p>	<p style="text-align: center;">208</p> <p>1 A. I don't. 2 Q. Do you know if the Lieutenant Governor sent 3 Senator Fraser a letter on January 20th concerning SB 4 14? 5 A. I don't remember a letter. 6 Q. If he did, would you have drafted it? 7 A. No. I probably would not have drafted it. 8 Q. Who would have drafted it? 9 A. Maybe Bryan, maybe -- maybe Blaine. 10 Q. Is this something you would have reviewed 11 before it went out? 12 A. Maybe for any kind of -- if there required any 13 fact checking in the letter, I could have. 14 Q. Is reserving a number for legislation common? 15 A. Yes. It's a tradition, yes. 16 Q. What do you mean by "it's a tradition"? 17 A. It's been done by at least -- I've worked for 18 two Lieutenant Governor's and both of them did it. 19 Q. Every legislative session? 20 A. Every legislative session that I'm aware of. 21 Q. How did -- does the Lieutenant Governor 22 generally save some of the numbers for his own 23 priorities and permit senators to request some for their 24 priorities; is that how it works? 25 A. Yes.</p>



<p style="text-align: center;">209</p> <p>1 Q. So the Lieutenant Governor would have to 2 coordinate with senators because he can't introduce 3 legislation himself, so he would have to know it's 4 coming, right?</p> <p>5 A. Well, in order for them to use one of those 6 numbers, they would have to ask him for that number or 7 he would have to say, "I'll give you this number if 8 you'll file this..." So, yes, there has to be some 9 communication.</p> <p>10 Q. So when he says, "I'll give you this number if 11 you file this bill," does Lieutenant Governor ever draft 12 the bill for that legislature?</p> <p>13 A. Yes, we have done so. It's typically in a 14 limited -- in -- it's typically for something we've been 15 working on through the interim with the Senator's Office 16 and we have helped, as I described earlier, draft 17 portions of the legislation.</p> <p>18 In complicated legislation, you divvy up 19 the articles and say, "Okay, you handle this part and 20 draft it, and I'll handle this part and draft it, and 21 we'll work it out." So we may have done that sort of 22 work.</p> <p>23 Q. So for SB 14, Lieutenant Governor must have 24 known that Senator Fraser was going to file something?</p> <p>25 A. File Senate Bill 14. Yes, he did know that.</p>	<p style="text-align: center;">211</p> <p>1 and he would give it the number he reserved? 2 A. Or it could have happened that Senator Fraser 3 asked to refile it as a low bill number.</p> <p>4 Q. Okay. Do you know which of those two -- 5 A. I don't. 6 Q. -- things happened? 7 A. I don't remember which -- which way it would 8 have happened.</p> <p>9 Q. Do you know who would remember? 10 A. Probably Senator Fraser. 11 Q. Would the Lieutenant Governor remember? 12 A. He may. 13 Q. Why did Senate Bill 14 need to be considered in 14 the first 60 days of the legislature?</p> <p>15 MR. FREDERICK: Objection, assumption of 16 facts not in evidence.</p> <p>17 A. The Governor gets to determine that. 18 Q. (By Ms. Berkower) But you said that just 19 because something's a legislative emergency means it can 20 be considered in the first 60 days but it doesn't have 21 to be considered in the first 60 days? 22 A. That's correct. 23 Q. So why did Senate Bill 14 need to be considered 24 in the first 60 days? 25 MR. FREDERICK: Same objection.</p>
<p style="text-align: center;">210</p> <p>1 Q. How did he know that? 2 A. Because he, Senator Fraser, would not have been 3 able to use Senate Bill 14 without Governor Dewhurst's 4 permission.</p> <p>5 Q. So did Governor Dewhurst decide after November 6 2010, when Senator Fraser first filed the bill, that he 7 was going to choose that particular bill to get the low 8 number that he had reserved?</p> <p>9 A. I don't think I understand the question. 10 Q. Well, you said that no one from your office had 11 had communications with Senator Fraser before he filed 12 the bill in November 2010, right? 13 A. Yeah, I don't -- I don't remember 14 conversations. We could have had conversations but we 15 did not pre-approve his -- the content of that 16 legislation. 17 Q. So Senator Fraser filed the bill -- 18 A. Right. 19 Q. -- and then it must have come to Lieutenant 20 Governor Dewhurst's attention at some point? 21 A. Yeah, they're all filed publicly. 22 Q. They're all filed publicly? 23 A. Yes. 24 Q. So he reviewed it and he decided that that 25 would be something he would ask Senator Fraser to refile</p>	<p style="text-align: center;">212</p> <p>1 You can answer. 2 A. Generally, the legislature tries to do what the 3 Governor asked them to do. 4 Q. (By Ms. Berkower) What was the urgency for 5 voter ID legislation? 6 A. I don't know. You'll have to ask Governor 7 Perry. 8 Q. Was the introduction or -- sorry. Was the 9 designation of voter ID legislation as emergency, a 10 legislative emergency, a procedural tactic designed to 11 ensure passage by preventing bill opponents from slowing 12 down consideration and bleeding out the legislative 13 clock? 14 MR. FREDERICK: Objection, argumentative. 15 A. I don't know. You'll have to ask Governor 16 Perry. 17 (Exhibit 107 marked for identification.) 18 Q. (By Ms. Berkower) Have you seen this letter 19 before? 20 A. Yes, I have. 21 Q. Did you draft this letter? 22 A. No. 23 Q. How have you seen this letter before? 24 A. Well, Governor Dewhurst sent it. I remember 25 it's his notice to tell everybody what was going to</p>



<p>213</p> <p>1 happen in the -- in the legislative process.</p> <p>2 Q. Do you know who drafted the letter?</p> <p>3 A. No. I'm sure it was several of us, but</p> <p>4 Governor Dewhurst probably drafted it. I do remember</p> <p>5 this letter. And the same letter went out to each of</p> <p>6 the senators.</p> <p>7 Q. So the last paragraph of the letter references</p> <p>8 a draft resolution outlining the procedures for the</p> <p>9 Committee of the Whole?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you remember what those were?</p> <p>12 A. I don't -- I don't remember the specifics, but</p> <p>13 that's -- that's pretty traditional when you've got a</p> <p>14 committee hearing. They have to adopt the rules that</p> <p>15 the committee will operate under. And so I'm sure</p> <p>16 that's what that's referencing is this is -- this is how</p> <p>17 we're going to run the business.</p> <p>18 Q. Do you know if those procedures were adopted in</p> <p>19 full or if any changes were made?</p> <p>20 A. I don't -- I don't remember any changes.</p> <p>21 (Exhibit 108 marked for identification.)</p> <p>22 Q. (By Ms. Berkower) Do you know what this is?</p> <p>23 A. I can read it. Yes.</p> <p>24 Q. Did you draft this?</p> <p>25 A. No, I did not.</p>	<p>215</p> <p>1 MR. FREDERICK: Objection, calls for</p> <p>2 speculation, assumes facts not in evidence.</p> <p>3 A. I don't think there is a need just for the</p> <p>4 period of time this was issued. I think we should</p> <p>5 always hope to have an election system with integrity</p> <p>6 that preserves One Person, One Vote.</p> <p>7 Q. (By Ms. Berkower) At the time this was</p> <p>8 released, though, was there a special need to protect</p> <p>9 One Person, One Vote, that wasn't already being met?</p> <p>10 A. I don't know.</p> <p>11 Q. What was the threat that existed to One Person,</p> <p>12 One Vote at the time that this was released?</p> <p>13 MR. FREDERICK: Objection, calls for</p> <p>14 speculation. Objection, calls for facts not in</p> <p>15 evidence.</p> <p>16 A. I don't --</p> <p>17 MR. FREDERICK: I'm sorry, go ahead.</p> <p>18 A. I don't know that there -- there was a specific</p> <p>19 threat. I do think there was a perception that we could</p> <p>20 make our voting system much more reliable and -- and</p> <p>21 uphold the integrity of one person and one vote.</p> <p>22 Q. Well, what was the basis for saying there's a</p> <p>23 need to uphold the integrity of the elections?</p> <p>24 MR. FREDERICK: Objection, calls for</p> <p>25 speculation.</p>
<p>214</p> <p>1 Q. Do you remember this being released?</p> <p>2 A. Vaguely. I remember a statement. I would not</p> <p>3 have been able to tell you what it said.</p> <p>4 Q. Is this a press release that Lieutenant</p> <p>5 Governor Dewhurst issued regarding the designation of</p> <p>6 voter ID legislation as emergency legislation?</p> <p>7 A. Yes.</p> <p>8 Q. Can you read the last paragraph of the press</p> <p>9 release.</p> <p>10 A. Yes.</p> <p>11 Q. It says, "Texans have fought and died for the</p> <p>12 principle of 'One Person, One Vote' and Republicans,</p> <p>13 Independents and Democrats all agree that we must uphold</p> <p>14 the integrity of our elections." What is that -- what</p> <p>15 does the reference to "One Person, One Vote" mean?</p> <p>16 A. Well --</p> <p>17 MR. FREDERICK: Objection, calls for</p> <p>18 speculation.</p> <p>19 A. I don't know what he was thinking when he gave</p> <p>20 that quote, specifically, but I think it's fair to say</p> <p>21 that Texans have historically fought for the ability to</p> <p>22 vote.</p> <p>23 Q. (By Ms. Berkower) Why is there a need to</p> <p>24 protect One Person, One Vote at this particular time</p> <p>25 that was released?</p>	<p>216</p> <p>1 A. I think current law does not require a thorough</p> <p>2 process for identifying to ensure -- identifying voters,</p> <p>3 and this statement implies that legislation would</p> <p>4 enhance that ability to ensure that one person is</p> <p>5 actually registered to vote, and does vote, and not</p> <p>6 somebody else voting for that person.</p> <p>7 Q. (By Ms. Berkower) Are you aware of the notice</p> <p>8 that the Lieutenant Governor gave to senators of the</p> <p>9 convening of the Committee of the Whole?</p> <p>10 A. This letter, yes.</p> <p>11 Q. Do you know how much notice Lieutenant Governor</p> <p>12 gave to senators of convening the Committee of the</p> <p>13 Whole?</p> <p>14 A. It appears to be four or five days.</p> <p>15 Q. Are you aware of how this notice was delivered</p> <p>16 to senators?</p> <p>17 A. I can tell you how, typically, we deliver a</p> <p>18 notice like this.</p> <p>19 Q. How?</p> <p>20 A. We would have copies of the letters hand-</p> <p>21 delivered to each of the senators with a signature sheet</p> <p>22 to show that each of the senators' offices received</p> <p>23 it. Sometimes we put them on their desks on the Senate</p> <p>24 Floor as well. And then we'll mail a copy as well.</p> <p>25 Q. Do you ever slip notes -- slip the letter under</p>



<p style="text-align: center;">217</p> <p>1 the door of the senators after hours?</p> <p>2 A. We do, but on a letter where it's a notice-type</p> <p>3 letter, we would go back and make sure that there is</p> <p>4 somebody signing for the letter.</p> <p>5 Q. Do you know if that's what happened in this</p> <p>6 case?</p> <p>7 A. I am not aware. We also fax them out to their</p> <p>8 district and capital offices frequently.</p> <p>9 Q. You want to review this? I'm not going to</p> <p>10 introduce it as an exhibit but you can just take a look</p> <p>11 and see if that refreshes your memory at all.</p> <p>12 MS. BERKOWER: I have a copy for you,</p> <p>13 Matt.</p> <p>14 Q. (By Ms. Berkower) Are you done looking at the</p> <p>15 letter?</p> <p>16 A. Yes.</p> <p>17 Q. Does this refresh your recollection as to</p> <p>18 whether or not notice was slipped under the door of</p> <p>19 senators after hours?</p> <p>20 A. Not really, no. I don't know that that's what</p> <p>21 happened.</p> <p>22 Q. Do you remember -- does this refresh your</p> <p>23 recollection -- excuse me. Does this refresh your</p> <p>24 recollection as to whether senators had been excused</p> <p>25 from being present in the Capital on the day that the</p>	<p style="text-align: center;">219</p> <p>1 wanted to be sure they would be -- they would be present</p> <p>2 for consideration of SB 14, wouldn't they have to come</p> <p>3 in on Monday?</p> <p>4 MR. FREDERICK: Objection, argumentative.</p> <p>5 Objection, assumes facts not in evidence.</p> <p>6 A. Well, yes, but they are coming in. They're</p> <p>7 excused until Monday afternoon.</p> <p>8 Q. (By Ms. Berkower) But the SB 14 could have been</p> <p>9 considered Monday morning; isn't that true?</p> <p>10 MR. FREDERICK: Objection, assumes facts</p> <p>11 not in evidence. Objection, relevance.</p> <p>12 A. I suppose so, but it's not -- this -- Senator</p> <p>13 Whitmire's resolution, I would need to look at the words</p> <p>14 of it, specifically. But that's from excused for being</p> <p>15 absent from the Senate Floor. It does not reference</p> <p>16 being absent from a Committee of the Whole. They're two</p> <p>17 different functions in the Senate.</p> <p>18 So there were committee hearings happening</p> <p>19 during the weekend and other committees were happening.</p> <p>20 So this committee is treated the same way that other</p> <p>21 committees were.</p> <p>22 Q. But doesn't the Committee of the Whole require</p> <p>23 all the senators to be present?</p> <p>24 A. No, it doesn't require all the senators to be</p> <p>25 present. It's a committee meeting, it requires a simple</p>
<p style="text-align: center;">218</p> <p>1 bill was going to be considered?</p> <p>2 A. That's not what this says. This says they were</p> <p>3 -- they left town on Thursday, not that they were</p> <p>4 excused the next -- the 24th.</p> <p>5 Q. I think in the second paragraph it says he did</p> <p>6 after the Senate -- the Senate unanimously passed</p> <p>7 Senator Whitmire's resolution respectfully --</p> <p>8 specifically authorizing all senators to be absent from</p> <p>9 the Capital until Monday afternoon.</p> <p>10 A. Yes. But you said on the day when the voter ID</p> <p>11 was going to be heard, and they were not.</p> <p>12 Q. Well, they were excused from being absent until</p> <p>13 Monday afternoon.</p> <p>14 MR. FREDERICK: Objection, form. Is there</p> <p>15 a question?</p> <p>16 Q. (By Ms. Berkower) Wasn't voter ID going to be</p> <p>17 considered on Monday?</p> <p>18 A. Well, yes, but they're excused until Monday</p> <p>19 afternoon. That means they can be there on Monday.</p> <p>20 Q. Was there anything in the notice that</p> <p>21 Lieutenant Governor sent that said the consideration of</p> <p>22 SB 14 would be after everyone had returned on Monday</p> <p>23 afternoon?</p> <p>24 A. No, but there was nothing that said otherwise.</p> <p>25 Q. But if they wanted to be sure -- if senators</p>	<p style="text-align: center;">220</p> <p>1 majority.</p> <p>2 Q. Are you aware that this -- that the procedure</p> <p>3 for consideration of SB 14 differed from the notice</p> <p>4 given in 2009 when senators were given more time to</p> <p>5 prepare?</p> <p>6 MR. FREDERICK: Objection, assumes facts</p> <p>7 not in evidence.</p> <p>8 A. Yeah, I would have to check those. I don't</p> <p>9 remember the timing. I mean, I can read what she wrote</p> <p>10 in her letter, I'd just need to check that.</p> <p>11 Q. (By Ms. Berkower) Well, what about from the</p> <p>12 bill history. I think you have that in front of you.</p> <p>13 Could you look at the bill history and figure out if</p> <p>14 there was more time given to prepare?</p> <p>15 A. From?</p> <p>16 Q. In 2009.</p> <p>17 MR. FREDERICK: Objection, vague.</p> <p>18 A. Well, there's a longer period of time between</p> <p>19 the date it was referred to the Committee of the Whole</p> <p>20 and the day that it was schedule for public hearing.</p> <p>21 Q. Do you know why a shorter time was allotted in</p> <p>22 2011 than in 2009?</p> <p>23 MR. FREDERICK: Objection, assumes facts</p> <p>24 not in evidence and calls for speculation. I object on</p> <p>25 basis of privilege to the extent this calls for</p>



<p style="text-align: center;">221</p> <p>1 Lieutenant Governor or any legislator's thought process 2 or any privileged communications.</p> <p>3 MS. BERKOWER: I asked if she knew why 4 not, not why.</p> <p>5 MR. FREDERICK: Same objection.</p> <p>6 If you can answer only the question of 7 whether or not you know why, you may do so. But do not 8 reveal any privileged matters.</p> <p>9 A. I'm not -- I'm not privileged to know exactly 10 why. So, no.</p> <p>11 Q. You don't know why?</p> <p>12 A. I don't know why.</p> <p>13 Q. Do you have any guess as to why?</p> <p>14 MR. FREDERICK: Objection, calls for 15 speculation.</p> <p>16 A. Yes.</p> <p>17 MR. FREDERICK: Relevance.</p> <p>18 A. But I'm not going to answer that.</p> <p>19 Q. (By Ms. Berkower) On the ground of privilege?</p> <p>20 A. On the ground of privilege.</p> <p>21 Q. Okay.</p> <p>22 MS. BERKOWER: This is Exhibit 5. (Exhibit 5 remarked for this deposition.)</p> <p>23 Q. (By Ms. Berkower) Okay.</p> <p>24 A. This is as filed?</p>	<p style="text-align: center;">223</p> <p>1 A. Okay. The expirations have changed from two 2 years to 60 days and that's generally consistent through 3 the legislation. And it allows for a concealed handgun 4 license that is expired for 60 days.</p> <p>5 Q. (By Ms. Berkower) Does SB 14 permit the use of 6 an ID issued by a federal agency?</p> <p>7 A. No, except of the federal government and 8 military ID.</p> <p>9 Q. Does SB 14 permit a voter to use an ID issued 10 by a Texas State agency, institution, or political 11 subdivision?</p> <p>12 A. No, it does not, except for those issued by the 13 DPS for concealed handgun licenses.</p> <p>14 Q. And driver's licenses?</p> <p>15 A. And driver's licenses, yes.</p> <p>16 Q. Does SB 14 permit any non-photo identification 17 to be used?</p> <p>18 A. No, it does not.</p> <p>19 Q. Does SB 362, turning to Page 7 of SB 362, 20 permit the use of identification cards used by a person 21 for obtaining public benefits including veterans 22 benefits, Medicaid or Medicare?</p> <p>23 A. No, it does not. It does allow an exemption 24 for people who've been designated with a disability by 25 the federal government and veterans administration --</p>
<p style="text-align: center;">222</p> <p>1 Q. I believe so. Oh, yeah, turn to the last 2 page. I think that may answer your question.</p> <p>3 A. Okay. Thank you. Oh, this says finally 4 passed.</p> <p>5 Q. Do you recognize this?</p> <p>6 A. Well, yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's Senate Bill 14 --</p> <p>9 Q. Are you familiar --</p> <p>10 A. -- as enrolled.</p> <p>11 Q. Are you familiar with its provisions?</p> <p>12 A. Yes, generally.</p> <p>13 Q. Could you compare SB 362 and SB 14, please?</p> <p>14 MR. FREDERICK: Objection, vague.</p> <p>15 Q. (By Ms. Berkower) Let's get them both out. 16 I'll go through questions with you.</p> <p>17 A. Here we go.</p> <p>18 Q. Turning to Section 63.0101, I think it's on 19 Page 9 in SB 14, and 5 on 362. Can you compare any 20 differences in the forms of ID permitted in SB 14?</p> <p>21 A. Yes.</p> <p>22 Q. What are those?</p> <p>23 MR. FREDERICK: Objection, vague.</p> <p>24 Objection, form.</p> <p>25 You may answer, if you can answer.</p>	<p style="text-align: center;">224</p> <p>1 Q. Well, I'm sorry to interrupt you. I think I 2 was asking you does SB 362 allow -- allow a voter to use 3 a public benefits card, including a card issued by the 4 United States for veterans benefits, Medicaid or 5 Medicare, as one form of non-photo identification that's 6 permitted?</p> <p>7 A. Yes, it does.</p> <p>8 Q. And does SB 362 permit the use of a utility 9 bill, bank statement, government check, paycheck, or 10 other government document as a form of non-photo ID? 11 That's on Page 6. There's a --</p> <p>12 A. Is it -- okay.</p> <p>13 Q. There on the bottom.</p> <p>14 A. Okay. Then, yes.</p> <p>15 Q. Does SB 14 permit either of those forms of ID 16 to be used?</p> <p>17 A. No, it does not.</p> <p>18 Q. Does it permit any non-photo ID to be used?</p> <p>19 MR. FREDERICK: Objection, asked and 20 answered.</p> <p>21 You may answer.</p> <p>22 A. No, it does not. But it does allow provisional 23 voting for people who have a religious objection to 24 photography, consistently use that objection.</p> <p>25 Q. Why did the forms of permitted IDs change</p>



225 1 between Senate Bill 362 and Senate Bill 14? 2 MR. FREDERICK: Objection, legislative 3 privilege. 4 I instruct you not answer. 5 I also object on relevance grounds. 6 Q. (By Ms. Berkower) What's the justification -- 7 are you going to answer? 8 A. No. 9 Q. What's the justification for any change in the 10 form of permitted IDs? 11 MR. FREDERICK: Objection, legislative 12 privilege. 13 Instruct you not to answer. 14 Q. (By Ms. Berkower) Are you going to answer? 15 A. No. 16 Q. Why was non-photo ID no longer included as a 17 way voters could verify their identify in SB 14? 18 MR. FREDERICK: Objection, legislative 19 privilege. 20 Instruct you not to answer. 21 A. I won't answer that. 22 Q. (By Ms. Berkower) Why was -- why is the -- for 23 purposes of expired ID, why does it have to be within 60 24 days of presentation? 25 MR. FREDERICK: Objection, legislative	227 1 changes? 2 MR. FREDERICK: Objection, legislative 3 privilege. 4 Instruct you not to answer. 5 A. I won't answer that. 6 Q. (By Ms. Berkower) Were you involved in 7 developing SB 14? 8 A. I was involved with amendments to Senate Bill 9 14, but not in the original legislation. 10 Q. Is that because Senator Fraser developed it 11 himself and filed it in November 2010? 12 A. Yes. 13 Q. Are you aware that the State of Texas in this 14 litigation identified you as someone who was involved in 15 developing SB 14? 16 MR. FREDERICK: Objection, assumes facts 17 not in evidence. 18 A. Yes. 19 Q. (By Ms. Berkower) So how were you involved in 20 developing SB 14? 21 A. Well, I just said I helped with amendments to 22 -- developing, to me, maybe I don't understand the 23 question. It's different between the original filed 24 version of the bill and the actual bill as enrolled. 25 And this did go through some changes. And I did help
226 1 privilege. 2 Instruct you not to answer. 3 A. I won't answer that, no. 4 Q. (By Ms. Berkower) In your view, do any of these 5 changes to SB 14 make it a better bill than SB 362 -- 6 MR. FREDERICK: Object -- 7 Q. (By Ms. Berkower) -- for purposes of 8 accomplishing -- sorry, I lost my train of thought. 9 I'll start over. 10 Does the change in -- do any of these 11 changes between SB 362 and SB 14 make it more likely -- 12 I'll ask something different. 13 Do you view these changes as a substantial 14 difference from the prior bills on voter ID filed in 15 2005, 2007 and 2009? 16 MR. FREDERICK: Objection, relevance. 17 Objection, vague. 18 A. Yes, I do. 19 Q. (By Ms. Berkower) How are these substantial 20 changes? 21 MR. FREDERICK: Objection, relevance. 22 Objection, vague. 23 A. 362 allowed non-photo ID. 14 only allows photo 24 ID except for some exceptions. 25 Q. (By Ms. Berkower) What's the purpose of these	228 1 make sure that the -- the documents were processed 2 appropriately from the committee stage to the Floor 3 stage, and then over to the House. And then went 4 through the appropriate procedures for the Conference 5 Committee and ensuring that the appropriate paperwork 6 was done for the entire process. 7 Q. That was your complete role in developing SB 8 14? 9 A. Yes. And ensuring that the Lieutenant Governor 10 was briefed on all of the issues and ensured that, you 11 know, people who needed information and copies of 12 amendments, got them. Awful lot of procedural work. 13 Q. Did you draft any of the amendments to SB 14? 14 A. No, I did not personally draft any of them. 15 Q. Who drafted them? 16 A. I don't know. Legislative counsel would have 17 drafted some. Individual members drafted their own 18 amendments, or were responsible for them. And our staff 19 could have helped draft some if they need to -- needed 20 help. 21 Q. Did you say early that the Lieutenant Governor 22 has never actually introduced an amendment to a bill? 23 A. I've never known him to, that I remember. 24 Q. So when you said you worked on drafting 25 amendments, were you working -- who were you working



<p style="text-align: center;">229</p> <p>1 for?</p> <p>2 A. The senators frequently ask us to help draft</p> <p>3 amendments.</p> <p>4 Q. Do you remember which senators you worked with?</p> <p>5 A. Senator Fraser, primarily.</p> <p>6 Q. How many amendments did you draft?</p> <p>7 A. I didn't draft any directly. I watched, you</p> <p>8 know, the process and ensured that the amendments --</p> <p>9 quite frequently, an amendment will be submitted that</p> <p>10 doesn't match the line number and the paragraph number</p> <p>11 necessary to amend the appropriate place in the</p> <p>12 legislation. So we'll check those amendments and ensure</p> <p>13 that they're accurate. And we do that quite frequently</p> <p>14 with legislation just to make sure the amendment falls</p> <p>15 in the right place.</p> <p>16 Q. Did you ever use any models -- model</p> <p>17 legislation from interest groups when you were working</p> <p>18 on amendments?</p> <p>19 A. No.</p> <p>20 Q. Who else in your office was involved in</p> <p>21 drafting and developing either the bill or any of its</p> <p>22 amendments?</p> <p>23 A. Bryan Hebert.</p> <p>24 Q. Was he involved with Senator Fraser's office</p> <p>25 before the bill was filed?</p>	<p style="text-align: center;">231</p> <p>1 A. Senator Fraser carried them all over in the</p> <p>2 Senate with the exception of the first one that was not</p> <p>3 picked up. So, no, we only worked with his office.</p> <p>4 Q. Anyone from the House?</p> <p>5 A. No. But Bryan Hebert may have been involved</p> <p>6 with -- with them.</p> <p>7 Q. When you would talk to -- when your office</p> <p>8 would communicate with Senator Fraser about SB 14, how</p> <p>9 would you communicate with them?</p> <p>10 A. Mostly talked to him in person or to Janice</p> <p>11 McCoy.</p> <p>12 Q. Did you have phone calls?</p> <p>13 A. Yes.</p> <p>14 Q. E-mails?</p> <p>15 A. Actually I don't remember any e-mails.</p> <p>16 Q. Did you speak with anybody else from Senator</p> <p>17 Fraser's office other than him and Janice McCoy?</p> <p>18 A. Not unless I was calling to leave a message for</p> <p>19 one of them to call me back.</p> <p>20 Q. Was what the substance of your communications?</p> <p>21 MR. FREDERICK: Objection, legislative</p> <p>22 privilege. Objection, vague.</p> <p>23 I instruct you not to answer based on</p> <p>24 privilege.</p> <p>25 A. Okay. I can't answer that.</p>
<p style="text-align: center;">230</p> <p>1 A. I don't remember if he was involved before the</p> <p>2 November 2010 filing, but he was involved after that.</p> <p>3 Q. How was he involved?</p> <p>4 A. He worked with their staff to see if there were</p> <p>5 any support information they needed, any assistance they</p> <p>6 need, and kept the Lieutenant Governor informed of the</p> <p>7 contents of the legislation.</p> <p>8 Q. Did he ever consult with you about any</p> <p>9 questions that arose during that process?</p> <p>10 A. Yes.</p> <p>11 Q. What did he ask you?</p> <p>12 MR. FREDERICK: Objection, legislative</p> <p>13 privilege.</p> <p>14 Instruct you not to answer.</p> <p>15 A. I can't answer that.</p> <p>16 Q. (By Ms. Berkower) At the time you were in --</p> <p>17 well, during the development of SB 14, did you have any</p> <p>18 communications about SB 14 with other current or former</p> <p>19 legislators that had offered past voter ID bills?</p> <p>20 MR. FREDERICK: Objection, vague.</p> <p>21 You can answer.</p> <p>22 A. Can you rephrase that?</p> <p>23 Q. (By Ms. Berkower) Sure. Did you ever consult</p> <p>24 with current or former legislators who had offered past</p> <p>25 voter ID bills during the time that you worked on SB 14?</p>	<p style="text-align: center;">232</p> <p>1 Q. Did you communicate with officials or</p> <p>2 legislators from other states about SB 14?</p> <p>3 A. When we were looking for people to testify in</p> <p>4 the Committee of the Whole, we did call someone from</p> <p>5 Indiana to do testimony. And, you know, I made one of</p> <p>6 those telephone calls.</p> <p>7 Q. You called the person from Indiana?</p> <p>8 A. Yeah, I called their office. I wasn't the one</p> <p>9 that was a primary contact for them though.</p> <p>10 Q. Who was the primary contact?</p> <p>11 A. I think Bryan ended up being the person, but we</p> <p>12 were all just trying to help.</p> <p>13 Q. Did you communicate with anyone in Georgia?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Did anyone else in your office?</p> <p>16 A. They could have.</p> <p>17 Q. Did you ever actually speak to the person from</p> <p>18 Indiana?</p> <p>19 A. When he came to testify, yes.</p> <p>20 Q. What was the nature of your conversation?</p> <p>21 A. Oh, I think he was concerned about what we</p> <p>22 thought that the Senate really wanted to hear. And, I</p> <p>23 mean, I remember having conversations about, "Tell them</p> <p>24 how you implemented your legislations and if there were</p> <p>25 any good things or any bad things about it or any</p>



<p>233</p> <p>1 problems." And out of -- the point was to get somebody 2 who had actually made voter ID legislation work, to talk 3 about what was necessary in order to make it work in 4 Texas. So that if we had an opportunity to change the 5 legislation to make it easier to implement or more 6 effective, that we made those changes.</p> <p>7 Q. So did he focus primarily on how to implement 8 the law?</p> <p>9 A. That's my memory, yes.</p> <p>10 Q. Did you talk to him about any other topics 11 relating to voter ID?</p> <p>12 A. I don't remember that.</p> <p>13 Q. What did he tell you about how to implement the 14 law?</p> <p>15 A. Oh, I don't remember the specifics. But I do 16 remember ensuring that there was sufficient voter 17 education in the legislation, and ensuring that -- that 18 we had funding in place to help the people who needed to 19 train the poll workers. And I think there was just an 20 awful lot of discussion of adequate training for 21 everyone and adequate notice for everyone.</p> <p>22 Q. Does SB 14 provide for training of poll 23 workers?</p> <p>24 A. Yes.</p> <p>25 Q. Does it provide money for training the poll</p>	<p>235</p> <p>1 for voters, but I don't know how much money that is. 2 Q. Did you have any discussion about whether 2 3 million dollars would be enough money to provide 4 adequate education both for voters and for poll worker 5 training?</p> <p>6 A. My memory is that the Secretary of State 7 testified that it was.</p> <p>8 Q. Did you communicate about SB 14 with any 9 interest group?</p> <p>10 A. I don't remember, personally, communicating 11 with them. I know we received letters and I know that 12 interest groups testified during the Committee of the 13 Whole process.</p> <p>14 Q. Did you have any communications with any groups 15 representing minority voters?</p> <p>16 A. Yes.</p> <p>17 Q. Who were they?</p> <p>18 A. I'm trying to remember. MALDEF. Lulac, I 19 would assume. Seems like the League of Women Voters 20 also sent us a letter.</p> <p>21 Q. So when you said -- when I -- to be more 22 specific, did you ever meet with any of those groups, or 23 anyone from your office meet with anyone from those 24 groups?</p> <p>25 A. At some point we have. I just don't remember</p>
<p>234</p> <p>1 workers?</p> <p>2 A. The bill itself doesn't but that happened 3 through different -- through the budget process.</p> <p>4 Q. Was any money allotted --</p> <p>5 A. Yes.</p> <p>6 Q. -- for poll worker training?</p> <p>7 A. I don't remember how it was divvied up but I 8 know there was money associated with the cost of the 9 implementation of this legislation and part of it had to 10 do with training and notice requirements for people.</p> <p>11 Q. Do you know how much money was set aside for 12 training and notice requirements?</p> <p>13 A. I don't remember. I remember the total cost 14 was about 2 million dollars.</p> <p>15 Q. Do you know how much money was allotted in 16 Indiana for similar efforts?</p> <p>17 A. No.</p> <p>18 Q. Do you have any sense of how much media time 2 19 million dollars can buy state-wide in Texas?</p> <p>20 A. No.</p> <p>21 Q. Do you know whether more money has been 22 allotted for other educational -- voter education 23 efforts in past years in Texas?</p> <p>24 A. I know that there is quite a lot of money that 25 flows through the Help America Vote Act for education</p>	<p>236</p> <p>1 when.</p> <p>2 Q. What was the substance of what was discussed?</p> <p>3 MS. BERKOWER: Object on the basis of 4 legislative privilege.</p> <p>5 I instruct you not to answer.</p> <p>6 A. Okay. I can't answer that.</p> <p>7 Q. (By Ms. Berkower) Did you have communications 8 about SB 14 with constituents?</p> <p>9 A. Yes.</p> <p>10 Q. When did you have those communications?</p> <p>11 A. We received quite a lot of letters on this 12 issue, pro and con.</p> <p>13 Q. What do the letters in favor generally say?</p> <p>14 A. Generally, that they expect the legislature to 15 pass voter ID.</p> <p>16 Q. And you said you also received communications 17 from opponents of voter ID?</p> <p>18 A. Yes.</p> <p>19 Q. What were those opponents saying?</p> <p>20 A. Just, generally, that the letters feel that --</p> <p>21 or the letter writers feel that voter ID would 22 disenfranchise voters.</p> <p>23 Q. Did you get any calls or e-mails from 24 constituents about voter ID?</p> <p>25 A. Our e-mail system I think of as our</p>



<p style="text-align: center;">237</p> <p>1 correspondence system, so, yes, that would happen 2 through the same process. I, personally, did not 3 received any separate e-mails associated with that.</p> <p>4 Q. How did your office respond to communications 5 from constituents?</p> <p>6 A. We -- we respond with a letter.</p> <p>7 Q. Did you suggest or make any changes to the bill 8 based on input you got from constituents?</p> <p>9 A. I know that there were some changes made on the 10 Floor that -- on -- during Senate deliberation of 11 legislation, that was based on information that they 12 heard during the Committee of the Whole process.</p> <p>13 Q. What were those?</p> <p>14 A. I know there were some details associated with 15 free IDs -- voter ID -- I mean, the DPS allowing for 16 free voting IDs and how that would be handled. Those 17 changes happen on the Floor and not in the Committee of 18 the Whole, though.</p> <p>19 Q. And that was in response to testimony or in 20 response to concerns raised by constituents?</p> <p>21 A. Well, they're the same. Testimony is typically 22 from constituents as well. I know that was part of the 23 discussion at some point.</p> <p>24 Q. Well, you said that there were also people 25 coming from out of state to testify?</p>	<p style="text-align: center;">239</p> <p>1 A. Let's see. We talked to the Secretary of 2 State's Office, to Coby Shorter. And I want to say that 3 we did have communications with some of the local 4 election officials about what would be required for 5 training and what sort of needs they might have to 6 implement the legislation.</p> <p>7 Q. Do you remember which local election officials 8 you spoke with?</p> <p>9 A. No.</p> <p>10 Q. Do you remember what counties they were from?</p> <p>11 A. I know we talked to someone from Harris 12 County. I don't remember beyond that.</p> <p>13 Q. Was it George Hammerline?</p> <p>14 A. I remember that name, but I can't remember the 15 conversation.</p> <p>16 Q. Was it Skipper Wallace?</p> <p>17 A. I know we've talked to Skipper Wallace, yes.</p> <p>18 Q. What was the nature of your conversation with 19 the person you mentioned from the State, Colby?</p> <p>20 A. Coby Shorter is an Assistant Secretary of State 21 and he would have asked him, "How much money do you 22 need? What kind of implementation efforts need to 23 happen?" The Secretary of State's Office manages the 24 election for the state.</p> <p>25 Q. What did he tell you?</p>
<p style="text-align: center;">238</p> <p>1 A. Yes. But we had an awful lot of testimony from 2 people from in state as well.</p> <p>3 Q. Did you have communications about SB 14 with 4 any officials in the government -- sorry, Governor's 5 Office?</p> <p>6 A. Like I said, I know that they called to tell us 7 they were going to issue an emergency order with voter 8 ID in it but that was like immediately before issuing 9 it. Other than that, I'm not aware of it.</p> <p>10 Like I said, the Governor and the Speaker 11 and the Lieutenant Governor have weekly breakfasts, and 12 I'm sure they discussed the fact that that was going to 13 be an item coming up, at that breakfast, but I was not 14 there at the breakfast.</p> <p>15 Q. So if we wanted to know about any 16 communications about SB 14 between the Lieutenant 17 Governor and the Governor, would we need to ask either 18 the Lieutenant Governor or the Governor?</p> <p>19 A. Yes.</p> <p>20 MR. FREDERICK: Objection, calls for 21 speculation.</p> <p>22 Q. (By Ms. Berkower) Did you have communications 23 with any state or local election officials about SB 14?</p> <p>24 A. Yes.</p> <p>25 Q. Who?</p>	<p style="text-align: center;">240</p> <p>1 MR. FREDERICK: I'm going to object. 2 And just caution you to not to reveal the 3 substance of any communication with the Secretary of 4 State's Office --</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. FREDERICK: -- directly involving 7 pending legislation. You may, however, identify the 8 general subject matter of your conversations.</p> <p>9 A. Well, I think I already did. What we would 10 have talked to them about is, "What do you need in order 11 to implement this?" They were the people who developed 12 the fiscal note, or the request for the fiscal note, in 13 order to fund this.</p> <p>14 Q. Did you, for the Lieutenant Governor, exchange 15 any drafts of SB 14 or amendments with anyone?</p> <p>16 A. Prior to the amendments being heard on the 17 Floor, I think they asked the senators if they wanted to 18 distribute a packet. And if the senators would like to 19 submit their amendments in advance, we put them in order 20 of where they fall in the bill and then distributed 21 those to the senators. That was immediately prior to 22 the hearing on the Floor. And it wasn't mandatory, it 23 was just an efficiency issue.</p> <p>24 So we would have gathered the amendments 25 if they chose to submit them, put them into a packet in</p>



<p style="text-align: center;">241</p> <p>1 order, and then distributed them out to the senators. 2 But that would not have been a public document that we 3 shared with other people.</p> <p>4 Q. It was just for senators and -- 5 A. Yes. 6 Q. -- for their reference. 7 A. It was an efficiency issue. 8 Q. Other than that, did you ever exchange any 9 drafts of SB 14 amendments with anyone?</p> <p>10 A. Not that I remember other than -- Senator 11 Fraser had some amendments and I think we looked at 12 those amendments in advance. Just as courtesy, he gave 13 us a copy of the amendments.</p> <p>14 Q. Did you make any changes to those amendments? 15 A. Not that I remember.</p> <p>16 Q. Did SB 14 change during the drafting process? 17 A. Okay.</p> <p>18 MR. FREDERICK: Objection, vague. 19 A. Yeah, I -- it was drafted, filed, and then it's 20 not the drafting process, it's the legislative process. 21 Q. Did SB 14 change during the legislative 22 process? 23 A. Yes, it did. It was amended. 24 Q. In what ways was it amended? 25 A. I don't remember the details of all the</p>	<p style="text-align: center;">243</p> <p>1 MS. BERKOWER: Matt? 2 MR. FREDERICK: Yeah, I'm going stick to 3 the instruction on that one.</p> <p>4 Q. (By Ms. Berkower) Well, okay. Did you consider 5 which forms of ID would be acceptable under SB 14?</p> <p>6 A. The Senate debated some additional forms of ID 7 publicly as amendments were offered. But that's 8 different from me personally considering some additional 9 options for ID.</p> <p>10 Q. What about the Lieutenant Governor? 11 MR. FREDERICK: Objection, vague. 12 Objection, form. Also object on the basis of privilege. 13 And instruct you not to answer.</p> <p>14 MS. BERKOWER: I can re-ask. 15 MR. FREDERICK: Okay.</p> <p>16 Q. (By Ms. Berkower) Do you know if the Lieutenant 17 Governor considered which forms of ID would be permitted 18 under SB 14?</p> <p>19 MR. FREDERICK: Object on the basis of 20 privilege.</p> <p>21 You can answer the specific question 22 whether you know or not. But do not reveal any of the 23 Lieutenant Governor's thought process or any 24 communications with him.</p> <p>25 A. He was certainly aware of the debate on</p>
<p style="text-align: center;">242</p> <p>1 amendments but I know there were some amendments that 2 dealt with the -- with the ID -- the free IDs. I do -- 3 that's my memory. The process for -- for getting a free 4 ID and when you qualified for a free ID. And then later 5 it changed in the House to remove one of the exemptions 6 for people over 70. It changed that exemption to be 7 under certain situations.</p> <p>8 Q. And during the legislative process, did the 9 Lieutenant Governor, or anyone in his office, review any 10 reports or studies relating to voter ID identification?</p> <p>11 MR. FREDERICK: Objection. I'm going to 12 object on the basis of privilege to the extent this 13 would ask you to reveal the substance of any 14 studies. As to the specific question of whether anyone 15 did or did not review studies, you may answer</p> <p>16 A. I don't remember any studies. I just don't 17 remember any studies.</p> <p>18 Q. (By Ms. Berkower) Did you consider including 19 any additional forms of ID in SB 14?</p> <p>20 MR. FREDERICK: Objection, relevance. 21 Objections, legislative privilege.</p> <p>22 I instruct you not to answer that 23 question.</p> <p>24 A. I can't answer that question.</p> <p>25 Q. (By Ms. Berkower) You can't say yes or no?</p>	<p style="text-align: center;">244</p> <p>1 different options because he was presiding over the 2 Senate as that public debate took place. But he doesn't 3 make amendments to legislation.</p> <p>4 Q. (By Ms. Berkower) If your photo ID has expired 5 but was validly issued, why doesn't that prove the 6 person is the same person on the ID?</p> <p>7 MR. FREDERICK: Objection, calls for 8 speculation. Objection, argumentative. And objection, 9 based on legislative privilege.</p> <p>10 I would instruct you not to answer on the 11 basis of privilege.</p> <p>12 A. Okay, I can't answer that.</p> <p>13 Q. What about in your personal experience?</p> <p>14 MR. FREDERICK: Objection, vague.</p> <p>15 Objection, form. Objection, relevance.</p> <p>16 You can answer if you understand the 17 question.</p> <p>18 Q. (By Ms. Berkower) Do you want me to repeat it?</p> <p>19 A. No, I just want to bring up whether or not 20 anybody had a fake ID in college. People change over a 21 period of time. They age, you look different. It's why 22 we have to redo our driver's licenses. That's why we 23 have to redo our passports.</p> <p>24 Q. Okay. So an expired license gives rise to 25 fraud, is that your --</p>



<p style="text-align: center;">245</p> <p>1 A. Yes, after a period of time. People change. 2 Q. But an unexpired license doesn't run that risk? 3 MR. FREDERICK: Objection, misstates prior 4 testimony, form. 5 Q. (By Ms. Berkower) Does having an unexpired 6 license reduce the risk that it will be -- reduce the 7 risk of fraud? 8 MR. FREDERICK: Objection, relevance. 9 Objection, calls for speculation. I would also object 10 on the basis of privilege to the extent it calls for any 11 thought process about pending legislation. 12 THE WITNESS: Uh-huh. 13 MR. FREDERICK: But if you can answer 14 without revealing that, you may do so. 15 A. Personally, I think a new ID is more designed 16 -- more likely to look like the person who applied for 17 it than an old ID. 18 Q. Are fake IDs generally expired? 19 MR. FREDERICK: Objection, relevance. 20 A. I don't know. 21 MR. FREDERICK: Calls for speculation. 22 A. I don't know. 23 Q. (By Ms. Berkower) How often in Texas do you 24 have to get your picture taken for a driver's license? 25 A. Oh, let me think. I know that you're supposed</p>	<p style="text-align: center;">247</p> <p>1 A. I'm sorry, I can't answer that. 2 Q. (By Ms. Berkower) Did you conduct any analysis 3 to determine if minority voters would be 4 disproportionately less likely to perform -- possess the 5 forms of ID required in SB 14? 6 MR. FREDERICK: Objection, legislative 7 privilege. 8 Instruct you not to answer. 9 A. Sorry, I can't answer that. 10 Q. (By Ms. Berkower) Janice McCoy testified in her 11 deposition that there were no studies at all that 12 analyzed who has an ID for purpose of SB 14, either 13 public or private? Do you agree with that? 14 MR. FREDERICK: Objection, assumes facts 15 not in evidence. Objection, relevance. Objection, 16 calls for speculation. 17 You may answer if you can. 18 A. I'm not aware of any reports. 19 Q. (By Ms. Berkower) That analyzed who has an ID 20 for purposes of SB 14? 21 A. Yes. 22 Q. What is a military ID? 23 A. My understanding is that it's an ID issued to 24 people who served in the military. Issued by the 25 federal government to people who have served in the</p>
<p style="text-align: center;">246</p> <p>1 to redo your driver's license every six years. You are 2 not allowed to waive the photo requirement unless you're 3 over, I think, 18 or 19 -- 19, I believe, is correct. 4 And then you can only waive it one time. So I would 5 think 12 years is the maximum. 6 Q. That you can go before you have to have your 7 picture taken? 8 A. That's my understanding, but I'm not absolutely 9 certain about that. 10 Q. Can't you renew your driver's license by mail 11 though? 12 A. Yes and online. 13 Q. And driver's licenses are valid for a period of 14 years, right? 15 A. Six years, yes. That's my memory. Unless 16 you're like a provisional voter, like, a 16 year-old -- 17 I mean provisional driver like a 16 year-old or 15 year- 18 old, then those last for a shorter period of time. 19 Q. Did you conduct any analysis, or anyone in your 20 office conduct any analysis as to how many registered 21 voters possess the required forms of ID required by SB 22 14. 23 MR. FREDERICK: Objection, legislative 24 privilege. 25 I'm instructing not to answer.</p>	<p style="text-align: center;">248</p> <p>1 military. 2 Q. Do you know how many different forms of 3 military ID there are? 4 A. No, I don't. 5 Q. Do you know how many different forms of 6 military ID are acceptable under SB 14? 7 A. I think it's a generic military ID, so it would 8 be all of them. 9 Q. Do you know whether the U.S. Military issues 10 IDs to non-citizens? 11 A. No, I don't. 12 Q. Do you know if the number of military IDs that 13 are acceptable under SB 14 is more or less than the 14 number of student IDs that would have been acceptable 15 under HB 218? 16 MR. FREDERICK: Objection, relevance. 17 Objection, calls for speculation. 18 A. I don't -- I don't know the numbers. 19 Q. (By Ms. Berkower) Have you ever seen a military 20 -- a U.S. Military ID? 21 A. Yes, I have. 22 Q. Which one have you seen? 23 A. While working on homeland security report, we 24 toured a number of military installations spaces, 25 different things, and I've seen plenty of military IDs</p>



<p style="text-align: center;">249</p> <p>1 clipped on people or are used to get us into areas of 2 the military base.</p> <p>3 Q. Did you know that the U.S. Military issues IDs 4 to contractors?</p> <p>5 A. No.</p> <p>6 MR. FREDERICK: Objection, assumes facts 7 not in evidence.</p> <p>8 You can answer.</p> <p>9 A. I was unaware of that.</p> <p>10 Q. (By Ms. Berkower) What is a citizenship 11 certificate?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know how much it cost to obtain one?</p> <p>14 A. No.</p> <p>15 Q. Have you ever seen one?</p> <p>16 A. No.</p> <p>17 Q. Do you know how much a replacement would cost?</p> <p>18 A. No.</p> <p>19 Q. Do you know what it might take to get a 20 replacement?</p> <p>21 A. I've applied for a passport recently, well, a 22 few years ago, and I remember there's a line for 23 citizenship certificates. And I don't remember the 24 price, but it seems like it was 30 dollars. I don't 25 remember.</p>	<p style="text-align: center;">251</p> <p>1 Q. Did the Lieutenant Governor contribute to that 2 decision in any way?</p> <p>3 A. In the initial filing, I don't think so. In 4 the Senate Bill 14 filing, I do think so. I mean, I 5 think he -- he agreed to allow that to be filed as it -- 6 as it was originally filed.</p> <p>7 Q. So if the Lieutenant Governor had wanted to 8 include non-photo ID, would he have done something about 9 it?</p> <p>10 MR. FREDERICK: Objection, calls for 11 speculation.</p> <p>12 A. He could have.</p> <p>13 Q. (By Ms. Berkower) Do you think he would have if 14 he had wanted to include non-photo ID in the bill?</p> <p>15 MR. FREDERICK: Objection, calls for 16 speculation.</p> <p>17 A. I don't know.</p> <p>18 Q. (By Ms. Berkower) Would you have advised him 19 to?</p> <p>20 MR. FREDERICK: Objection, relevance. 21 Objection, calls for speculation.</p> <p>22 A. Not typically. On something he knows an awful 23 lot about, that wasn't necessary.</p> <p>24 Q. How does the Lieutenant Governor know an awful 25 lot about voter ID?</p>
<p style="text-align: center;">250</p> <p>1 Q. Do you know how long it might take to get a 2 replacement citizenship certificate?</p> <p>3 A. No.</p> <p>4 Q. How much did it cost to get a U.S. passport 5 when you got one?</p> <p>6 A. I think I paid 70 dollars because I had it 7 expedited.</p> <p>8 Q. Do you know what documents you need to get a 9 passport?</p> <p>10 A. Yes. I typically use my existing passport and 11 showed that to them again but I've also taken my 12 daughter in and it required both parents to sign a form 13 saying that she was our child and a birth certificate 14 and a social security card.</p> <p>15 Q. What was the purpose of removing from SB 14 the 16 option for a voter to show non-photo ID?</p> <p>17 MR. FREDERICK: Objection, legislative 18 privilege.</p> <p>19 Instruct not to answer.</p> <p>20 A. I can't answer that.</p> <p>21 Q. (By Ms. Berkower) Who made the decision to 22 remove non-photo ID from SB 14?</p> <p>23 A. The bill sponsor, bill author.</p> <p>24 Q. Would that be Senator Fraser?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">252</p> <p>1 MR. FREDERICK: Objection, legislative 2 privilege.</p> <p>3 Instruct you not to answer.</p> <p>4 A. I'm sorry, I can't answer that.</p> <p>5 Q. (By Ms. Berkower) What changed between 2009 and 6 2011 that made two forms of non-photo ID an acceptable 7 option in 2009 but not in 2011?</p> <p>8 MR. FREDERICK: Objection, argumentative. 9 Objection, assumes facts not in evidence. Also object 10 on the basis of legislative privilege.</p> <p>11 Instruct you not to answer the question.</p> <p>12 A. I'm sorry, I can't answer that.</p> <p>13 Q. (By Ms. Berkower) You can't even answer about 14 public things, public evidence that -- of changes?</p> <p>15 MS. BERKOWER: Matt?</p> <p>16 MR. FREDERICK: If you want to rephrase 17 the question, I can alter my instruction.</p> <p>18 Q. (By Ms. Berkower) Okay. Do you know of any 19 evidence that two forms of non-photo ID is no longer 20 enough in 2011?</p> <p>21 MR. FREDERICK: Objection, vague. 22 Objection, assumes facts not in evidence. Objection, 23 argumentative. Also object on the basis of privilege. 24 Instruct you not to answer except to the 25 extent that you can answer the specific question without</p>



<p style="text-align: center;">253</p> <p>1 revealing privilege.</p> <p>2 A. I'm not aware. I'm not aware of what changed.</p> <p>3 Q. (By Ms. Berkower) You're not aware of what</p> <p>4 changed between 2009 and 2011?</p> <p>5 A. No.</p> <p>6 Q. Janice McCoy testified in her deposition that</p> <p>7 what had happened between 2009 and 2011 was that things</p> <p>8 had worked out well in Indiana and Georgia. Do you</p> <p>9 agree with that statement?</p> <p>10 MR. FREDERICK: Objection, assumes facts</p> <p>11 not in evidence. Objection, relevance. Objection to</p> <p>12 the extent it calls for thought process or privileged</p> <p>13 communications.</p> <p>14 To the extent you can answer without</p> <p>15 revealing privileged matters, you can do so.</p> <p>16 A. I think that's -- Janice is in a position to</p> <p>17 say how Senator Fraser was feeling when he filed the</p> <p>18 legislation, and as such, I'm sure she's correct that's</p> <p>19 what Senator Fraser was thinking. But it's irrelevant</p> <p>20 for the purposes of what I know.</p> <p>21 Q. (By Ms. Berkower) Do you know the purpose of</p> <p>22 not allowing non-photo ID in SB 14?</p> <p>23 MR. FREDERICK: Objection on the basis of</p> <p>24 legislative privilege and instruct you not to answer to</p> <p>25 the extent it's a yes or no question. Whether you know</p>	<p style="text-align: center;">255</p> <p>1 on the basis of privilege to the extent it calls for the</p> <p>2 substance of any discussion.</p> <p>3 You may answer only to the extent whether</p> <p>4 you do know or do not know of such discussions.</p> <p>5 A. Can you restate the question? I'm sorry.</p> <p>6 Q. Yes. Yes.</p> <p>7 MS. BERKOWER: Actually, can you read it</p> <p>8 back?</p> <p>9 A. I'm sorry.</p> <p>10 (The requested portion was read by the</p> <p>11 court reporter.)</p> <p>12 MR. FREDERICK: Same objection.</p> <p>13 A. Yeah, I think there was discussion after the</p> <p>14 filing of the initial bill in November, and before the</p> <p>15 filing of Senate Bill 14.</p> <p>16 Q. (By Ms. Berkower) Is this discussion between</p> <p>17 the Lieutenant Governor or staff members and</p> <p>18 legislators?</p> <p>19 A. Yes.</p> <p>20 Q. Which legislators?</p> <p>21 A. Senator Fraser.</p> <p>22 Q. Any others?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Were there also internal discussions in the</p> <p>25 Lieutenant Governor's Office?</p>
<p style="text-align: center;">254</p> <p>1 the purpose, you may answer only to that extent.</p> <p>2 A. Yes, I think I know the purpose.</p> <p>3 Q. What is the purpose?</p> <p>4 MR. FREDERICK: Objection, legislative</p> <p>5 privilege.</p> <p>6 Instruct you not to answer.</p> <p>7 A. I can't answer that.</p> <p>8 Q. (By Ms. Berkower) What was the purpose of</p> <p>9 removing from SB 14 the option for a voter to show a</p> <p>10 state- or federal-issued photo ID as SB 362 allowed?</p> <p>11 MR. FREDERICK: Objection, legislative</p> <p>12 privilege.</p> <p>13 Instruct you not to answer.</p> <p>14 A. I can't answer that.</p> <p>15 Q. Do you know the purpose of removing those forms</p> <p>16 of ID from SB 14?</p> <p>17 MR. FREDERICK: Object on the basis of</p> <p>18 privilege. Also object on relevance.</p> <p>19 To the extent it's a yes or no question</p> <p>20 whether you know, you may answer only to that extent.</p> <p>21 A. No, I don't know.</p> <p>22 Q. (By Ms. Berkower) Do you know of discussions</p> <p>23 concerning the types of ID that would be permitted under</p> <p>24 SB 14?</p> <p>25 MR. FREDERICK: Objection, vague. Object</p>	<p style="text-align: center;">256</p> <p>1 A. I -- I think we briefed Governor Dewhurst on</p> <p>2 the filing of Senator Fraser's original legislation to</p> <p>3 the extent that happened, yes.</p> <p>4 Q. How would allowing the forms of ID permitted in</p> <p>5 SB 362 prevent the goals of SB 14 from being met?</p> <p>6 MR. FREDERICK: Objection to the extent it</p> <p>7 seeks her opinion. I object on the grounds of</p> <p>8 relevance. Otherwise, I object on the grounds of</p> <p>9 legislative privilege and would instruct you not to</p> <p>10 answer.</p> <p>11 A. Okay, I can't answer that.</p> <p>12 Q. (By Ms. Berkower) Are you aware that the</p> <p>13 Indiana photo ID allows for a wider range of IDs than SB</p> <p>14 permits?</p> <p>15 MR. FREDERICK: Objection, assumes facts</p> <p>16 not in evidence.</p> <p>17 You may answer.</p> <p>18 A. I remember it having some additional forms of</p> <p>19 ID but I don't remember what they are.</p> <p>20 Q. (By Ms. Berkower) Are you aware of whether</p> <p>21 that's true with the Georgia photo ID?</p> <p>22 A. No, I'm not.</p> <p>23 MS. BERKOWER: Can we take a five-minute</p> <p>24 break off the record?</p> <p>25 MR. FREDERICK: Sure.</p>



<p style="text-align: center;">257</p> <p>1 (Recess from 2:29 to 2:38 p.m.)</p> <p>2 Q. (By Ms. Berkower) Since we got that time</p> <p>3 check, it seems we have an hour and 43 minutes left of</p> <p>4 time, but I know Ms. Rathgeber needs to leave at 3:30.</p> <p>5 Is there any flexibility with your plans?</p> <p>6 A. There is, but I'd appreciate it if you can get</p> <p>7 it pretty close to 3:30. It would very kind of you.</p> <p>8 Q. So if we just kept going straight with no more</p> <p>9 breaks, would that be acceptable?</p> <p>10 A. That would be better for me if we could do</p> <p>11 that.</p> <p>12 Q. Okay. That's what we'll do. Otherwise, if</p> <p>13 it's a hard deadline, we could schedule another time to</p> <p>14 finish.</p> <p>15 A. Well, I'd rather not come back.</p> <p>16 Q. Okay.</p> <p>17 A. While this has been delightful, I'd rather not.</p> <p>18 Q. Okay. Well, then we'll just keep going all the</p> <p>19 way through.</p> <p>20 A. And I haven't let out a "bless your heart" yet,</p> <p>21 but I'm about to. Oh, bless your heart. You don't want</p> <p>22 to do that to me. (laughing)</p> <p>23 Q. Okay. I don't get that very often. (laughing)</p> <p>24 MR. FREDERICK: So just so I'm clear, are</p> <p>25 we planning on going straight until 3:30?</p>	<p style="text-align: center;">259</p> <p>1 your office have any discussions about that decision</p> <p>2 with him?</p> <p>3 A. Not that I'm aware of prior to his original</p> <p>4 filing. I'm sure -- I think there were discussions</p> <p>5 about that issue about what was included and what was</p> <p>6 not before he filed Senate Bill 14.</p> <p>7 Q. What about after he filed Senate Bill 14?</p> <p>8 MR. FREDERICK: Objection, form.</p> <p>9 Objection, vague.</p> <p>10 A. Not that I remember.</p> <p>11 Q. (By Ms. Berkower) What was the substance of</p> <p>12 any discussions that you had?</p> <p>13 MR. FREDERICK: Objection, vague.</p> <p>14 Objection, legislative privilege.</p> <p>15 I instruct you not to answer.</p> <p>16 A. I can't answer that.</p> <p>17 Q. (By Ms. Berkower) What were the circumstances</p> <p>18 by which the license to carry concealed handgun were</p> <p>19 included in SB 14?</p> <p>20 MR. FREDERICK: Object on the grounds of</p> <p>21 privilege. To the extent it requires you to disclose</p> <p>22 thought process or communications, if you can describe</p> <p>23 the general circumstances without doing that, you may</p> <p>24 answer.</p> <p>25 A. I think it was a -- the concealed handgun</p>
<p style="text-align: center;">258</p> <p>1 MS. BERKOWER: I think we're going to go</p> <p>2 straight until we finish with the time or until we</p> <p>3 finish with the questions, whichever comes first. But</p> <p>4 we will not take any further breaks unless something</p> <p>5 unexpected happens.</p> <p>6 MR. FREDERICK: Okay.</p> <p>7 MS. BERKOWER: That seems to be okay with</p> <p>8 Ms. Rathgeber. Is that okay with you, Matt?</p> <p>9 MR. FREDERICK: Yeah, that's -- I mean</p> <p>10 whatever is okay with the witness is fine with me.</p> <p>11 Q. (By Ms. Berkower) Okay. So getting back to SB</p> <p>12 14.</p> <p>13 A. Uh-huh.</p> <p>14 Q. What was the purpose of removing from SB 14 the</p> <p>15 option for a voter to show a valid employee ID as SB 362</p> <p>16 allowed?</p> <p>17 MR. FREDERICK: Objection, legislative</p> <p>18 privilege. I instruct you not to answer.</p> <p>19 A. I can't answer that.</p> <p>20 Q. (By Ms. Berkower) Do you know who made that</p> <p>21 decision?</p> <p>22 A. Yes.</p> <p>23 Q. Who made that decision?</p> <p>24 A. Senator Fraser.</p> <p>25 Q. Did you have any discussions or anyone from</p>	<p style="text-align: center;">260</p> <p>1 license had been included in previous drafts, and there</p> <p>2 was a thought that because of the DPS background check</p> <p>3 associated with it, that it was a higher form of ID, and</p> <p>4 therefore, would be perfect to include.</p> <p>5 Q. Did you say a higher form of ID?</p> <p>6 A. A more strenuous form of ID.</p> <p>7 Q. What does that mean exactly?</p> <p>8 A. That you had to meet certain requirements in</p> <p>9 order to get a concealed handgun license that were even</p> <p>10 more onerous than a driver's license.</p> <p>11 Q. Do you know what those additional requirements</p> <p>12 are?</p> <p>13 A. I don't remember all of them.</p> <p>14 Q. Do you know the racial composition of license</p> <p>15 to carry holders?</p> <p>16 A. No.</p> <p>17 MR. FREDERICK: Objection, relevance.</p> <p>18 You can answer.</p> <p>19 A. No, I don't.</p> <p>20 Q. (By Ms. Berkower) Is it disproportionately</p> <p>21 White relative to Texas registered voters?</p> <p>22 MR. FREDERICK: Objection, relevance.</p> <p>23 A. I don't know.</p> <p>24 Q. (By Ms. Berkower) Are you aware of any</p> <p>25 legislator or staff who suspected that TLC holders are</p>



<p style="text-align: center;">261</p> <p>1 disproportionately White?</p> <p>2 MR. FREDERICK: Objection, relevance.</p> <p>3 Objection, calls for speculation.</p> <p>4 A. I'm not aware of that issue.</p> <p>5 Q. (By Ms. Berkower) As an attorney, did you have any concern that it might create an appearance that the law was enacted with discriminatory purpose?</p> <p>6 MR. FREDERICK: Objection, relevance.</p> <p>7 A. I've been inactive with my legal license for a couple of years, so it would be inappropriate for me to be acting as an attorney during the period of time that this bill was being heard.</p> <p>8 Q. (By Ms. Berkower) Well, I'm not asking you to act as an attorney. I'm just saying that you've had -- with the legal training that you do have, did this -- did the fact that TLC holders are disproportionately White raise any concerns in your mind that the law may be viewed as an act of discriminatory purpose?</p> <p>9 MR. FREDERICK: Objection, assumes facts not in evidence. Objet to relevance. I also object to the extent it seeks her mental process or impressions about the act.</p> <p>10 I instruct you not to answer on the basis of privilege.</p> <p>11 A. I can't answer that.</p>	<p style="text-align: center;">263</p> <p>1 Q. (By Ms. Berkower) Were there any similar concerns about people who didn't have the financial resources to get themselves to a location where they could get appropriate ID?</p> <p>2 MR. FREDERICK: Objet on the basis of privilege to the extent it seeks thought process.</p> <p>3 I will instruct you not to answer on the basis of privilege.</p> <p>4 A. I'm sorry. I can't answer that.</p> <p>5 Q. (By Ms. Berkower) Why didn't the SB 14 include the use of student IDs?</p> <p>6 MR. FREDERICK: Objection, legislative privilege.</p> <p>7 I instruct you not to answer.</p> <p>8 A. I can't answer that.</p> <p>9 Q. (By Ms. Berkower) Wasn't it allowed in the previous voter ID bills?</p> <p>10 MR. FREDERICK: Objection, relevance.</p> <p>11 Objection, argumentative.</p> <p>12 A. It was allowed in some of the previous bills. I don't remember if it was in 363 or not, or 362 or not.</p> <p>13 Q. (By Ms. Berkower) Was there some change in circumstance between 2009 and 2011 that made student IDs less reliable in some way?</p> <p>14 MR. FREDERICK: Objection. Objet on the</p>
<p style="text-align: center;">262</p> <p>1 Q. (By Ms. Berkower) Did anyone conduct a research into the racial composition of TLC -- of license to carry holders?</p> <p>2 MR. FREDERICK: Objection, vague. You may answer if you know.</p> <p>3 A. I'm not aware of that data. I was not aware of that.</p> <p>4 Q. (By Ms. Berkower) How did the exception for individuals with disabilities come to be included in SB 14?</p> <p>5 MR. FREDERICK: Objection to the extent it calls for you to reveal any legislator's thought process or staff members for a privileged communication that you may answer to the extent you can do so without revealing privileged matters.</p> <p>6 A. I remember general discussions of people who would not be able to go outside their homes or living spaces in order to get the appropriate ID in which to vote. And one of the discussions -- one had -- some of the discussions center around people who were disabled or so significantly disabled that it would be hard to transport them to a place to get the appropriate identification, whether it was a driver's license or a voter ID or any other ID. And so I think that was the justification.</p>	<p style="text-align: center;">264</p> <p>1 basis of relevance. Objet on the basis of legislative privilege.</p> <p>2 I instruct you not to answer.</p> <p>3 A. I'm sorry. I can't answer that.</p> <p>4 Q. (By Ms. Berkower) Was there any publicly known reason that student IDs were less reliable in 2009 -- I'm sorry, in 2011 than in 2009?</p> <p>5 A. Not that I'm aware of. But I'm not certain they were included in 362, student IDs were a specific inclusion to the 362. I think only to the extent that you could argue that a valid identification card issued by an institution or political subdivision of the state, which would apply only to those state -- those people attending state institutions as opposed to private colleges.</p> <p>6 Q. How many state institutions does Texas have?</p> <p>7 A. I don't remember. Counting community colleges is about 60.</p> <p>8 Q. Do you know how many students are enrolled at those schools?</p> <p>9 A. No, I don't.</p> <p>10 Q. Is it more than a thousand?</p> <p>11 A. Yes.</p> <p>12 Q. Is it more than 10,000?</p> <p>13 A. Yes.</p>



<p style="text-align: center;">265</p> <p>1 Q. Is it more than a hundred thousand? 2 MR. FREDERICK: Object. Calls for 3 speculation. 4 You may answer if you know but don't 5 speculate. 6 A. I know there are more than a hundred thousand 7 students enrolled in higher education in Texas. I don't 8 know how many of them are Texas residents. 9 Q. (By Ms. Berkower) Can you get Texas residency 10 if you're enrolled as a student in a school of higher 11 learning in Texas? 12 A. Under situations where you've served in the 13 military or lived in the state for a set period of time, 14 there are some exceptions that allow for state 15 residency. But they're -- they're more limited than -- 16 I don't know. There are some situations where you can 17 get residency, yes. 18 Q. Was there any concern that you knew of that 19 failure to include student IDs might disproportionately 20 impact minority voters? 21 MR. FREDERICK: Objection, legislative 22 privilege. 23 Instruct you not to answer. 24 A. I can't answer that. 25 Q. (By Ms. Berkower) Do you know if any analysis</p>	<p style="text-align: center;">267</p> <p>1 mean that it -- it was relevant more than once in their 2 lives, that they had a habit of refusing to have their 3 photo taken for religious objections, that those people 4 should not be excluded from voting. And so they set 5 forth a process that those people could vote. 6 Q. (By Ms. Berkower) Why is it that some changes 7 in response to concerns raised about SB 14 and the types 8 of identification permitted were taken into account and 9 others were not? 10 MR. FREDERICK: Objection, assumes facts 11 not in evidence, calls for speculation, and object on 12 legislative privilege and instruct you not to answer. 13 A. I can't answer that. 14 Q. (By Ms. Berkower) Well, you just said the 15 legislature made modifications to SB 14 for persons with 16 disabilities, correct? 17 A. Correct. 18 Q. The legislature made modifications to SB 14 for 19 persons with particular religious beliefs regarding 20 photography, did they not? 21 A. Yes. 22 Q. Did the legislature make modifications to SB 14 23 based on concerns pertaining to racial and ethnic 24 minorities? 25 MR. FREDERICK: Objection, legislative</p>
<p style="text-align: center;">266</p> <p>1 was conducted to determine the effect of excluding 2 student IDs? 3 MR. FREDERICK: Objection, legislative 4 privilege. 5 Instruct you not to answer. 6 A. I can't answer that. 7 Q. (By Ms. Berkower) Did you have any concern, 8 given your legal training, that it might create an 9 appearance that the law was enacted with a 10 discriminatory purpose? 11 MR. FREDERICK: Objection, vague. 12 Objection, relevance. Objection, legislative privilege. 13 Instruct you not to answer. 14 A. I can't answer that. 15 Q. (By Ms. Berkower) How did the exception for 16 individuals with religious objections to being 17 photographed come to be included in SB 14? 18 MR. FREDERICK: Objection to legislative 19 privilege, but if you can answer without revealing 20 privileged matters or communications, you may do so. 21 A. My memory is that there was discussion about 22 people who refused to have their photo taken under any 23 situation, and the general consensus from the senators 24 was that those people should not be excluded from voting 25 if their objection was a habit that they had and -- I</p>	<p style="text-align: center;">268</p> <p>1 privilege. 2 Instruct you not to answer. 3 A. I can't answer that. 4 MS. BERKOWER: She can't answer yes or no? 5 MR. FREDERICK: No, she can't, because it 6 implies that -- it implies a thought process. The 7 concern is identified in the question. 8 MS. BERKOWER: It doesn't say -- okay. 9 Q. (By Ms. Berkower) Can you describe the 10 provisions in the bill pertaining to administration of 11 the ID requirement at the polls? 12 MR. FREDERICK: Objection, vague. 13 You can answer. 14 A. Yeah. I don't know that I understand that. 15 Q. (By Ms. Berkower) Well, we can turn to that 16 section. 17 A. That would be helpful. Thank you. 18 Q. I think it's on Page 5. 19 A. Okay. 20 Q. Item C. 21 A. Uh-huh. Yes. 22 Q. So why were so few specifics included in the 23 bill about how the new requirement would be implemented 24 at the polls? 25 MR. FREDERICK: Objection, vague.</p>



<p style="text-align: center;">269</p> <p>1 Objection, speculation. Objection, legislative 2 privilege.</p> <p>3 Instruct you not to answer.</p> <p>4 A. I'm sorry. I can't answer that.</p> <p>5 Q. (By Ms. Berkower) Doesn't the success of the 6 bill hinge on proper administration of the polls?</p> <p>7 MR. FREDERICK: Objection, argumentative.</p> <p>8 Objection, calls for speculation. Objection, relevance.</p> <p>9 Q. (By Ms. Berkower) You can answer.</p> <p>10 A. It's typical in legislation to set forth the 11 objective and then allow the agency that administers it 12 to determine what specifically needs to happen through 13 the rule-making process, which is also a public process, 14 and how to implement it. The legislature understands 15 that they don't know everything, and the people closest 16 to administering it would be the best ones to determine 17 how that should happen.</p> <p>18 Q. Well, if that's the case, then why were you in 19 the best position to determine which type of 20 identification should be used?</p> <p>21 MR. FREDERICK: Objection, argumentative.</p> <p>22 Objection, assumes facts not in evidence.</p> <p>23 Mischaracterizes the prior testimony. And also calls 24 for legislative privilege.</p> <p>25 I would instruct you not to answer on the</p>	<p style="text-align: center;">271</p> <p>1 the other types, and that there ought to be at least one 2 option that allowed people to get a certificate if they 3 couldn't get the appropriate other identification. And 4 so they developed a process for creating a specific 5 identification certificate for the purposes of voting.</p> <p>6 Q. Did you or anyone in the Lieutenant Governor's 7 office play a role in drafting that provision?</p> <p>8 A. I did not.</p> <p>9 Q. Do you know what it was modeled on?</p> <p>10 A. I do not.</p> <p>11 Q. Are you aware of any concerns about this 12 certificate and the difficulty it might -- the 13 difficulty in obtaining it?</p> <p>14 MR. FREDERICK: Objection, vague.</p> <p>15 A. I'm not aware of what the difficulty would be.</p> <p>16 Q. (By Ms. Berkower) Well, I guess, are you aware 17 of any concerns that the certificate may be difficult 18 for people to obtain?</p> <p>19 MR. FREDERICK: Object on legislative 20 privilege to the extent this calls for confidential or 21 nonpublic communications among legislators or 22 legislative thought process. If you're aware of 23 nonprivileged discussions, you may answer the question.</p> <p>24 A. There was public discussion on the Senate floor 25 about insuring that there was not a fee for the election</p>
<p style="text-align: center;">270</p> <p>1 basis of privilege.</p> <p>2 A. I can't answer.</p> <p>3 Q. (By Ms. Berkower) Why didn't the legislature 4 take more steps to specify how poll workers would 5 determine whether the voter had presented an ID that 6 proved their identity?</p> <p>7 MR. FREDERICK: Objection, legislative 8 privilege.</p> <p>9 Instruct you not to answer.</p> <p>10 A. I can't answer that.</p> <p>11 Q. (By Ms. Berkower) How was the election 12 identification certificate provision in SB 14 developed?</p> <p>13 MR. FREDERICK: Object to the extent it 14 calls for thought process, mental impressions or 15 communications involving specific legislators about 16 pending legislation.</p> <p>17 If you can answer without revealing 18 privileged matters, you can do so.</p> <p>19 A. Which one are you asking about, the --</p> <p>20 Q. (By Ms. Berkower) The election identification 21 certificate. Do you mean which section?</p> <p>22 A. Yeah. Oh, here it is on 13. There was a 23 concern or my memory is there was discussion on the 24 Senate floor after testimony that there are people who 25 could not for some reason or another get an ID of one of</p>	<p style="text-align: center;">272</p> <p>1 identification certificate. There was some discussion 2 about whether or not having an election identification 3 certificate was equivalent to a poll tax, and therefore, 4 it was made free so that it would never be considered a 5 poll tax for people, for voters.</p> <p>6 Q. (By Ms. Berkower) Do you know of any nonpublic 7 conversations about any concerns with the certificate?</p> <p>8 MR. FREDERICK: Object on the basis of 9 legislative privilege.</p> <p>10 Instruct you not to answer.</p> <p>11 A. I'm sorry. I can't answer that.</p> <p>12 Q. (By Ms. Berkower) Do you know the average 13 distance to drivers -- to DPS offices in Texas?</p> <p>14 A. No.</p> <p>15 MR. FREDERICK: Objection, relevance.</p> <p>16 A. No, I don't.</p> <p>17 Q. (By Ms. Berkower) Do you know if it's the same 18 in rural and urban areas?</p> <p>19 MR. FREDERICK: Objection, relevance. You 20 may answer.</p> <p>21 A. I would assume it was less in urban areas than 22 rural areas, but I don't that for a fact.</p> <p>23 Q. (By Ms. Berkower) Is there a DPS office in 24 every county?</p> <p>25 A. I don't think so.</p>



<p style="text-align: center;">273</p> <p>1 Q. Is there public transportation to all DPS 2 offices? 3 A. I don't know. 4 Q. Do you know what the wait time is at DPS 5 offices on average? 6 A. I know it varies by DPS office. 7 Q. Do you know about how long it is? 8 A. I know that they're trying to achieve an 9 objective level, and I don't know what that level is. I 10 think it's 20 minutes, but I think they're exceeding 11 that at this moment. 12 Q. Have you ever spent only 20 minutes at a DPS 13 office? 14 A. Yes, I have. 15 Q. When was that? 16 A. Last time I renewed my driver's license. 17 Q. Where did you go? 18 A. The DPS had an office that was downtown, and I 19 went and renewed my driver's license, and it took about 20 five minutes. 21 Q. Downtown here in Austin? 22 A. Yes. It's been since closed. 23 Q. It since closed that office? 24 A. Uh-huh. 25 Q. Too few customers?</p>	<p style="text-align: center;">275</p> <p>1 voter would need to take to obtain one of these 2 certificates? 3 MR. FREDERICK: Objection, legislative 4 privilege. 5 Instruct you not to answer. 6 A. I'm sorry. I can't answer that. 7 Q.(By Ms. Berkower) Do you know what documents are 8 needed to obtain an election identification certificate? 9 A. No. I'm reading that right now. 10 Q. But you're not generally familiar with which 11 document? 12 A. No. I don't remember. 13 Q. If the documents that you need to show to get 14 an ID are not themselves free, doesn't that mean the ID 15 itself isn't really free? 16 MR. FREDERICK: Objection, argumentative. 17 Objection, assumes facts not in evidence. You may 18 answer. 19 A. I don't think so. I think there's a difference 20 between the components of an issue and the actual issue 21 itself. I mean, I drive myself to work each day, and I 22 don't have -- I don't get paid for my car or my gas in 23 order to get to work, but I get paid for the work I 24 do. To me, I'm still not getting paid for that 25 transportation to get to work. I don't see the</p>
<p style="text-align: center;">274</p> <p>1 A. Could be. 2 Q. Do you know what the cost of obtaining the 3 underlying documents needed to get an election 4 identification certificate is? 5 A. No, I don't. 6 Q. Did you ever hear any of these kinds of issues 7 raised when the bill was being debated in the Senate? 8 A. I remember a discussion about whether or not 9 the certificate itself cost money, but I don't remember 10 any other discussion about it. 11 Q. Did you conduct any analysis on these issues? 12 MR. FREDERICK: Objection, legislative 13 privilege. 14 Instruct you not to answer. 15 A. I'm sorry. I can't answer that. 16 Q. (By Ms. Berkower) Do you know of any analysis 17 that was conducted on these issues? 18 MR. FREDERICK: Objection, vague. 19 Also instruct you not to answer on the 20 basis privilege. 21 A. Not that I remember. I'm sorry. I can't 22 answer that. 23 Q. (By Ms. Berkower) During the legislative 24 drafting process or the legislature's consideration of 25 SB 14, do you know of any analysis of costs or steps a</p>	<p style="text-align: center;">276</p> <p>1 components as being necessary to valuing the whole. 2 Q. (By Ms. Berkower) Would you take a job where 3 it cost more to get to work than you were paid? 4 MR. FREDERICK: Objection, relevance. 5 A. I don't think so. 6 Q. (By Ms. Berkower) So if you have to pay -- if 7 you have to pay for documents that you need to get one 8 of these certificates -- 9 A. Uh-huh. 10 Q. -- doesn't that mean the certificate itself 11 isn't actually free given the underlying costs? 12 MR. FREDERICK: Objection, argumentative. 13 A. I don't think I agree with that logic. I 14 really just don't. I think that some of these documents 15 could be things that you have from your family or that 16 you didn't pay for in order to get it. 17 Q. (By Ms. Berkower) But what if you didn't have 18 any of those to begin with and you had to buy 19 replacements from the state? 20 A. But if you did, it would be free. 21 Q. But if you don't, would it still be free? 22 MR. FREDERICK: Objection, argumentative. 23 A. I just don't see that as a cost for getting the 24 certificate. 25 Q. (By Ms. Berkower) Well, what if you weren't</p>



<p>277</p> <p>1 born in at a hospital, then --</p> <p>2 MR. FREDERICK: Objection. Sorry.</p> <p>3 Q. (By Ms. Berkower) -- and you had to buy a copy</p> <p>4 of your birth certificate in order to get a replacement</p> <p>5 copy in order to get the election certificate --</p> <p>6 information certificate. Doesn't that mean you're</p> <p>7 effectively paying for the election certificate?</p> <p>8 MR. FREDERICK: Objection,</p> <p>9 argumentative. Objection, calls for speculation.</p> <p>10 You may answer if you can.</p> <p>11 A. I think there's a process at DHS for -- for</p> <p>12 getting free copies of your birth certificate. You</p> <p>13 can't get an unlimited number of them, but you can get</p> <p>14 some free ones.</p> <p>15 Q. (By Ms. Berkower) What if it's not free</p> <p>16 though?</p> <p>17 MR. FREDERICK: Objection, vague.</p> <p>18 Objection, form.</p> <p>19 A. Then it's not free.</p> <p>20 MR. FREDERICK: You can answer if you can.</p> <p>21 Q. (By Ms. Berkower) If the documents you need to</p> <p>22 get an ID are not themselves free, wouldn't that mean</p> <p>23 there's a cost to voting for those who lack the</p> <p>24 necessary underlying documents?</p> <p>25 MR. FREDERICK: Objection, argumentative.</p>	<p>279</p> <p>1 certificates?</p> <p>2 MR. FREDERICK: Objection.</p> <p>3 To the extent this calls for your mental</p> <p>4 impressions or thought process about SB 14 as pending, I</p> <p>5 would instruct you not to answer on the basis</p> <p>6 privilege. Otherwise, I would object based on</p> <p>7 relevance. And to the extent you can answer without</p> <p>8 disclosing privileged information, you can, if you're</p> <p>9 able to.</p> <p>10 A. I don't -- I don't know the statistics on who</p> <p>11 has IDs and who doesn't.</p> <p>12 Q. (By Ms. Berkower) Did you ever ask?</p> <p>13 MR. FREDERICK: Objection,</p> <p>14 form. Objection, vague.</p> <p>15 Also instruct you not to answer on the</p> <p>16 basis of privilege.</p> <p>17 A. I'm sorry. I can't answer that.</p> <p>18 Q. (By Ms. Berkower) Where does one obtain an</p> <p>19 election identification certificate?</p> <p>20 A. I think you can get them from the DPS.</p> <p>21 Q. Does SB 14 require employers to provide paid</p> <p>22 leave to obtain one of these IDs?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Do some individuals in Texas live at least 50</p> <p>25 miles from a driver's license office?</p>
<p>278</p> <p>1 Objection, assumes facts not in evidence.</p> <p>2 You may answer if you can.</p> <p>3 A. I just can't answer that question. I don't</p> <p>4 think that's an equivalency.</p> <p>5 Q. (By Ms. Berkower) And it's not an equivalency</p> <p>6 why?</p> <p>7 MR. FREDERICK: Objection, form.</p> <p>8 A. The fact that you have to pay for something in</p> <p>9 order to get something else doesn't mean that that</p> <p>10 something else is actually costing you something,</p> <p>11 particularly if there are alternatives for achieving</p> <p>12 that -- that third item. I just don't see that as a --</p> <p>13 as a given. There may be situations where somebody has</p> <p>14 to spend money in order to get a free certificate, but</p> <p>15 there may be plenty of situations where they're not.</p> <p>16 That doesn't make the certificate cost money.</p> <p>17 Q. (By Ms. Berkower) Not even for the people who</p> <p>18 had to pay for the underlying document?</p> <p>19 MR. FREDERICK: Objection, form.</p> <p>20 A. The certificate itself doesn't cost money. The</p> <p>21 things required in order to obtain the certificate may</p> <p>22 cost money. I do think there's a difference.</p> <p>23 Q. (By Ms. Berkower) Do you know whether Whites,</p> <p>24 Hispanics or Blacks or any other group are more likely</p> <p>25 not to have the necessary ID to get one of these</p>	<p>280</p> <p>1 A. I don't know.</p> <p>2 Q. How much does gas currently cost per gallon in</p> <p>3 Texas in your experience?</p> <p>4 A. About 3.60.</p> <p>5 Q. So how much would it cost at a minimum to drive</p> <p>6 the hundred miles round trip?</p> <p>7 MR. FREDERICK: Objection, vague.</p> <p>8 Objection, calls for speculation. Objection, relevance.</p> <p>9 A. I think it depends on how far your car goes.</p> <p>10 If you have a Prius, I mean, it doesn't cost too</p> <p>11 much. But I do think your point is taken, it costs</p> <p>12 money to drive somewhere.</p> <p>13 Q. (By Ms. Berkower) Do you have a copy of your</p> <p>14 birth certificate?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Where would you get a copy if you lost it?</p> <p>17 A. The DHS, Department of Human Services.</p> <p>18 Q. Do you know how much that would cost?</p> <p>19 A. No, I don't.</p> <p>20 Q. Do you know how long it would take?</p> <p>21 A. I've done it before, and it seems like to me I</p> <p>22 called them and picked it up in an afternoon.</p> <p>23 Q. How would you go about finding out where to go</p> <p>24 and how much it cost if you didn't know?</p> <p>25 A. All that information is online.</p>



<p style="text-align: center;">281</p> <p>1 Q. Was any part of the purpose of SB 14 to 2 decrease the number of Hispanic voters?</p> <p>3 MR. FREDERICK: Objection, to the extent 4 this calls for you to reveal anyone's thought process or 5 communications, but to the extent it only seeks 6 information about the purpose of the bill itself, you 7 may answer.</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. (By Ms. Berkower) Was any part of the purpose 10 of SB 14 to decrease the number of any other groups of 11 minority voters?</p> <p>12 MR. FREDERICK: Same instruction.</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. (By Ms. Berkower) Was any part of the purpose 15 of SB 14 to prevent illegal aliens from voting?</p> <p>16 MR. FREDERICK: Same instruction.</p> <p>17 A. Not that I'm aware of. Although I'm aware of 18 representative Brown's quote on the floor in the House, 19 so she may have had that intent, but that was not the 20 intent in the Senate as I'm aware of.</p> <p>21 Q. (By Ms. Berkower) Was it an intent of 22 Lieutenant Governor Dewhurst?</p> <p>23 MR. FREDERICK: Objection, relevance.</p> <p>24 Objection, legislative privilege.</p> <p>25 Instruct you not to answer.</p>	<p style="text-align: center;">283</p> <p>1 A. Yes, plus the ability to increase voter 2 confidence in the security of the voting process.</p> <p>3 Q. Did the purpose of photo ID in Texas evolve 4 over time between legislative sessions?</p> <p>5 MR. FREDERICK: Objection. To the extent 6 that calls for legislative subjective understanding and 7 thought process, I instruct you not to answer.</p> <p>8 A. I would say, obviously, the bill drafts changed 9 over a period of time, so, yes, it changed over a period 10 of time.</p> <p>11 Q. (By Ms. Berkower) But did the purpose of the 12 laws change over time?</p> <p>13 A. Not from my perspective, no.</p> <p>14 Q. Was it always to prevent in-person voter fraud?</p> <p>15 A. Yes, I think so.</p> <p>16 Q. Was it ever to prevent illegal aliens from 17 voting?</p> <p>18 A. Not from my perspective, but I know that there 19 may be people who have said that.</p> <p>20 Q. Lieutenant Governor, though, has consistently 21 indicated in his public statements that one of the 22 purposes was to prevent noncitizens from voting. Can 23 you explain that?</p> <p>24 MR. FREDERICK: Objection, calls for speculation. Also object to the extent that it calls</p>
<p style="text-align: center;">282</p> <p>1 A. I'm sorry. I can't answer that.</p> <p>2 Q. (By Ms. Berkower) Was any part of the purpose 3 of SB 14 to discriminate in any way against a group or 4 groups of minority voters?</p> <p>5 MR. FREDERICK: Just give you the same 6 cautionary instruction. You may testify about the 7 purpose.</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. (By Ms. Berkower) Was any part of the purpose 10 of SB 14 for partisan purposes?</p> <p>11 MR. FREDERICK: Same instruction.</p> <p>12 A. What do you mean by that?</p> <p>13 Q. (By Ms. Berkower) Well, was any part of the 14 purpose to depress democratic participation -- 15 Democrats' participation in elections to further the 16 partisan interests of Republican candidates?</p> <p>17 MR. FREDERICK: Same instruction.</p> <p>18 A. Oh, not that I'm aware of.</p> <p>19 Q. (By Ms. Berkower) So, in your view, what was 20 the purpose of SB 14?</p> <p>21 A. As I've said before, to ensure the integrity of 22 the voting process, to make sure that the person voting 23 is actually the person that they say they are on the 24 voter registration.</p> <p>25 Q. Is that -- is that every purpose of SB 14?</p>	<p style="text-align: center;">284</p> <p>1 for the Lieutenant Governor's thought process about 2 pending legislation. I would instruct you not to 3 answer.</p> <p>4 A. I'm sorry. I can't answer that.</p> <p>5 MS. BERKOWER: Some of those statements 6 were public statements. Matt, she can't answer about 7 the public statements, why he said in public that the 8 purpose was to prevent noncitizens from voting?</p> <p>9 MR. FREDERICK: Well, first of all, I 10 don't think she can because she doesn't know what he's 11 thinking. But to the extent that that question would 12 call for her to reveal his internal thought process 13 about pending legislation, yes, I think that would be 14 privileged.</p> <p>15 Q. (By Ms. Berkower) So you're not answering?</p> <p>16 A. No. I'm not answering.</p> <p>17 Q. If we wanted to know why the Lieutenant 18 Governor consistently indicates that one of the purposes 19 of SB 14 was to prevent noncitizens from voting, would 20 we need to ask him?</p> <p>21 MR. FREDERICK: Objection, relevance.</p> <p>22 Q. (By Ms. Berkower) You may answer.</p> <p>23 A. Yes.</p> <p>24 Q. Do you know of any evidence that in-person voter impersonation is a problem?</p>



<p style="text-align: center;">285</p> <p>1 A. I know that there was some testimony to that 2 effect during the Committee of the Whole process of the 3 Senate floor discussion, but I don't remember the 4 specifics.</p> <p>5 Q. Do you know of any studies that documented a 6 widespread problem?</p> <p>7 MR. FREDERICK: Objection, vague. 8 Also instruct you not to reveal any 9 confidential communication or investigation by the 10 Lieutenant Governor, but to the extent you can answer 11 without doing that, you may answer.</p> <p>12 A. The discussion I remember having was held in 13 public session on the floor.</p> <p>14 Q. (By Ms. Berkower) Are you aware of any 15 incidents, specific incidents of in-person voter fraud 16 in the state of Texas in the last 20 years?</p> <p>17 A. I've read newspaper articles that describe 18 voter fraud, but I don't know the specifics.</p> <p>19 Q. Do you know of any incidents of mail-in ballot 20 fraud that have occurred in the state of Texas in the 21 last 20 years?</p> <p>22 A. Again, I've read newspaper articles that 23 discussed mail-in voter fraud and in-voter registration 24 fraud over the past 20 years or so, but I don't remember 25 the specifics.</p>	<p style="text-align: center;">287</p> <p>1 speculation. 2 Q. (By Ms. Berkower) You may answer. 3 A. There's a procedure set forth for anybody to 4 vote provisionally and then show up with the appropriate 5 identification within I think six days. If that's what 6 you're asking.</p> <p>7 Q. Would a person who had to take off work or 8 travel to a DPS office to get an election identification 9 certificate have confidence in the system?</p> <p>10 MR. FREDERICK: Objection, calls for 11 speculation.</p> <p>12 A. I don't know. 13 Q. (By Ms. Berkower) Do you think SB 14 will 14 increase turnout?</p> <p>15 MR. FREDERICK: Objection, relevance. 16 If you have an opinion, you may answer.</p> <p>17 A. I don't know. 18 Q. (By Ms. Berkower) Did the Lieutenant Governor 19 play a role in developing a strategy to ensure that SB 20 14 was passed?</p> <p>21 MR. FREDERICK: Objection, vague. I would 22 also object on the basis of legislative privilege. And 23 instruct you not to reveal any communications, mental 24 impressions or thought process. To the extent you can 25 answer the specific question whether or not he had any</p>
<p style="text-align: center;">286</p> <p>1 Q. Why was it not a sufficient deterrent to voter 2 fraud to increase criminal penalties?</p> <p>3 MR. FREDERICK: Objection, legislative 4 privilege.</p> <p>5 Instruct you not to answer.</p> <p>6 A. I'm sorry. I can't answer that.</p> <p>7 Q. (By Ms. Berkower) Do you know if the increase 8 in criminal penalties that SB 14 be included are 9 currently in effect?</p> <p>10 A. Yes. The bill's not in effect because it's 11 undergoing DOJ review.</p> <p>12 Q. Why would -- why did SB 14 not include any 13 provisions about mail-in ballots?</p> <p>14 MR. FREDERICK: Objection, legislative 15 privilege.</p> <p>16 Instruct you not to answer.</p> <p>17 A. I'm sorry. I can't answer that.</p> <p>18 Q. (By Ms. Berkower) Have you ever heard about 19 voters who did not vote because they were concerned that 20 voter fraud would cancel out their vote?</p> <p>21 A. I don't remember a discussion to that effect.</p> <p>22 Q. Would a registered voter who has voted in 23 previous elections but who was refused a regular ballot 24 because of SB 14 still have confidence in the system?</p> <p>25 MR. FREDERICK: Objection, calls for</p>	<p style="text-align: center;">288</p> <p>1 role, you may do so, if you can do it without revealing 2 privileged information. I would also object on the 3 grounds that it assumes facts not in evidence.</p> <p>4 A. As president of the Senate, he has a role in 5 whether or not a piece of legislation is heard, yes.</p> <p>6 Q. (By Ms. Berkower) That wasn't exactly the 7 question. The question was whether he played a role in 8 developing a strategy to ensure that SB 14 was passed.</p> <p>9 MR. FREDERICK: Same objection. Same 10 instruction.</p> <p>11 A. Same answer. As president of the Senate, where 12 he controls what's heard on the floor, yes, he would 13 develop a strategy for when a bill is heard. He gets to 14 choose when they're heard.</p> <p>15 Q. (By Ms. Berkower) What was that strategy in 16 the case of SB 14?</p> <p>17 MR. FREDERICK: Objection, on the basis of 18 legislative privilege.</p> <p>19 Instruct you not to answer unless you can 20 do so without revealing confidential communications or 21 thought processes.</p> <p>22 A. In his role as president of the Senate, the 23 Lieutenant Governor operates as a traffic cop, when 24 bills are heard, what order they're heard in.</p> <p>25 Frequently, a Senator will be out of the -- off the</p>



<p style="text-align: center;">289</p> <p>1 Senate floor because they need to go give a speech or 2 have lunch with a constituent, and so we don't hear 3 their bills during the period of time that they're not 4 available.</p> <p>5 So, yes, to the extent that he is the 6 manager of the Senate legislative work process, he does 7 have a role in determining when a bill is heard, how 8 it's heard, how soon it's heard, when it's heard, who is 9 recognized, all the above.</p> <p>10 Q. (By Ms. Berkower) Was it part of the 11 Lieutenant Governor's strategy to pass SB 14 -- was part 12 of the strategy to send the bill directly to the 13 Committee of the Whole?</p> <p>14 MR. FREDERICK: Objection, argumentative. 15 Objection, also, on legislative privilege to the extent 16 it asks for the Lieutenant Governor's thought process.</p> <p>17 To the extent you can answer without 18 revealing that or privileged communications, you may do 19 so, but if you cannot, I instruct you not to answer.</p> <p>20 A. I think, as I've answered earlier, the intent 21 was to follow the Senate rules, to the extent possible, 22 to recognize that Governor Perry enlisted as an 23 emergency item, and to allow the Senate, the full 24 Senate, the opportunity to hear all of the testimony, 25 all of the public testimony, and all the witnesses. And</p>	<p style="text-align: center;">291</p> <p>1 extent that he tried to do what the Governor listed as 2 an emergency item, yes, he did try and hear the bill 3 during the emergency item period. 4 (Exhibit 109 marked for identification.) 5 Q. (By Ms. Berkower) This is Exhibit 109. 6 A. Okay. 7 Q. Do you recognize this? 8 A. I assume these are Senate rules for the 82nd 9 legislature. 10 Q. Can you turn to Rule 5.11? 11 A. Okay. Hold on. I got two copies here. 12 Q. Oh. 13 A. Yes. 14 Q. Does this suspend the two-thirds requirement 15 for voter ID legislation again in the 2011 legislative 16 session? 17 A. Yes. I think it continues the rule as it 18 existed in the 2009 session. 19 Q. Did the Lieutenant Governor choose to refer SB 20 14 directly to the Committee of the Whole? 21 A. Yes, he makes that decision. 22 Q. Did the full Senate adopt a resolution 23 concerning the procedures to apply when in the Committee 24 of the Whole Senate for the duration of the 25 consideration of SB 14?</p>
<p style="text-align: center;">290</p> <p>1 so, yes, I think hearing it in the Committee of the 2 Whole was his decision.</p> <p>3 Q. (By Ms. Berkower) Did the Lieutenant Governor 4 have any plan to prevent what occurred in 2009 to SB 362 5 from happening to SB 14?</p> <p>6 MR. FREDERICK: Objection, assumes facts 7 not in evidence. Objection, calls for speculation. I 8 also object on the basis of legislative privilege and 9 instruct you not to answer unless you can do so without 10 revealing privileged matters.</p> <p>11 A. I don't understand the question because prevent 12 what from happening to 14 that happened to 316, what are 13 we preventing?</p> <p>14 Q. (By Ms. Berkower) Well, prevent -- prevent 15 anything from happening -- well, I guess, did he have 16 any communications with members of the House or the 17 Governor's office to ensure that the bill would pass 18 both houses?</p> <p>19 MR. FREDERICK: Objection, based on 20 privilege. You may answer whether a communication 21 occurred, but I instruct you not to reveal the substance 22 of any communication.</p> <p>23 A. Well, when the Governor issues an emergency 24 proclamation, it's a very public process, and the 25 legislature tries to respond accordingly. So to the</p>	<p style="text-align: center;">292</p> <p>1 A. I assume so. They had to adopt rules in order 2 to hearing it -- have a hearing. 3 MS. BERKOWER: Okay. And we have another 4 exhibit. This will be 110, I guess. 5 (Exhibit 110 marked for identification.) 6 Q. (By Ms. Berkower) Do you recognize this? 7 A. It's the Senate journal for Monday, January 11, 8 2011. 9 Q. Can you turn your attention to Page 60, 10 please? What's the heading of this page? 11 A. Senate Resolution 79. 12 Q. And can you read the third paragraph that 13 starts "Resolved"?</p> <p>14 A. Okay. (Reading to herself.) 15 Q. And then Item 1. 16 A. Okay. 17 Q. "The committee shall afford reasonable 18 opportunity to interested parties to appear and testify 19 before the committee." Do you see that? 20 A. Yes. 21 Q. How long was SB 14 considered in the Senate 22 from first reading to passage? 23 A. I don't remember. Do you have that here? 24 Q. Do you want to just refresh your recollection 25 with it?</p>



<p style="text-align: center;">293</p> <p>1 A. Yes, please. 2 Q. (Handed to witness.) 3 MS. BERKOWER: Matt, do you have a copy? 4 MR. FREDERICK: I can look on with this 5 one. Thank you. 6 A. It was filed on the 12th and engrossed on the 7 26th of January. 8 Q. Compared to other bills you've worked on, was 9 that a relatively short time? 10 MR. FREDERICK: Objection, vague. 11 You can answer. 12 A. It happens from time to time. 13 Q. (By Ms. Berkower) When else has it happened? 14 A. Well, we have a special session on the 15 transportation bill and did everything in about three 16 days one summer. That was summer of 2009. 17 Q. Do you think that this period of time afforded 18 interested parties a reasonable opportunity to appear 19 and testify? 20 A. Well, yes. I mean, they did testify. 21 Q. Do you think that this was enough time, a 22 reasonable amount of time? 23 MR. FREDERICK: Objection, relevance. 24 A. I mean, every bill is required to have a 25 hearing, and this bill had a hearing with public</p>	<p style="text-align: center;">295</p> <p>1 Senate rules. 2 Q. Did the Lieutenant Governor have a role during 3 consideration of SB 14 on the Senate floor? 4 A. Yes. He was the president of the Senate, and 5 he managed recognizing the senators to hear the bill and 6 discuss it, debate it. 7 Q. He carried out his procedural duties during 8 that time? 9 A. Yes, he did. 10 Q. During the floor debate on SB 14, did anyone 11 raise concerns about its impact on minority voters? 12 A. I don't remember the specific information, but 13 I rather think Senator West did. 14 Q. What concerns did he have? 15 A. I don't remember the details. 16 Q. Were there any changes to SB 14 during floor 17 consideration that you view as responsive to minority 18 concerns? 19 MR. FREDERICK: Object, basis of 20 relevance. Also object to the extent it calls for your 21 own mental impressions as a staff member of the 22 Lieutenant Governor. I would instruct you not to answer 23 on the basis of privilege. 24 A. Okay. I know that there were amendments 25 offered and adopted. I just don't remember what they</p>
<p style="text-align: center;">294</p> <p>1 testimony and expert witnesses. It was held in a very 2 public place that is televised for people within the 3 Capitol complex as well. 4 Q. (By Ms. Berkower) Did you have a role during 5 -- I'm sorry? 6 A. Oh, I just -- you can go look at it. 7 Q. Did you have a role during consideration by the 8 Committee of the Whole at SB 14? 9 A. Did I have a role? 10 Q. Yes. 11 A. No. I didn't have an official role. 12 Q. Did the Lieutenant Governor? 13 A. Yes. 14 Q. What was it? 15 A. Well, he referred the bill to the Committee of 16 the Whole. He determined who would be in charge during 17 the Committee of the Whole. And then he participated 18 as -- acting as a senator during the Committee of the 19 Whole process, listened to testimony. 20 Q. Did you have a role during consideration of SB 21 14 on the Senate floor? 22 A. I don't have an official role with it, but we 23 prepared the background information, insured that all 24 the paperwork was prepared and compiled in such a manner 25 so that the bill was ready to be heard according to the</p>	<p style="text-align: center;">296</p> <p>1 did. 2 Q. (By Ms. Berkower) What does it mean to you 3 when a legislator says on the Senate floor "I'm not 4 advised"?</p> <p>5 A. That means that they're not aware of whatever 6 the issue is.</p> <p>7 Q. Is part of a bill's sponsor -- is part of the 8 role of the bill's sponsor to answer questions about it?</p> <p>9 A. Sometimes that responsibility is shared with 10 other senators. For instance, we divvy up the budget 11 into articles and each senator -- there are senators who 12 develop expertise on each of those articles of the 13 budget, and they answer the questions about that 14 article, not the Chair of Finance who typically carries 15 the budget.</p> <p>16 Q. Do you remember if Senator Fraser repeatedly 17 said "I'm not advised" during a Senate's consideration 18 of SB 14?</p> <p>19 MR. FREDERICK: Objection, relevance. 20 You can answer.</p> <p>21 A. I don't remember what he said.</p> <p>22 Q. (By Ms. Berkower) Were you ever -- were you 23 aware of whether the forms of ID listed in SB 14 are the 24 least restrictive options to achieve the goal of 25 avoiding voter fraud?</p>



<p>297</p> <p>1 MR. FREDERICK: Objection, relevance. 2 Objection, calls for a legal conclusion. Calls for 3 speculation. I also object on the basis of privilege 4 and instruct you not to answer.</p> <p>5 A. I'm sorry. I can't answer that.</p> <p>6 Q. (By Ms. Berkower) Do you know if Lieutenant 7 Governor Dewhurst had any communications about what 8 forms of ID to include in SB 362?</p> <p>9 MR. FREDERICK: Objection, asked and 10 answered. Also object to the extent it calls for 11 legislatively privileged communications, but you may 12 answer if you can remember the question whether or not 13 such communications occurred.</p> <p>14 A. I know that he was thoroughly briefed on 15 362. I don't -- I don't think he was involved in the 16 original drafting of it, but he may have been involved 17 in the amendments to that.</p> <p>18 Q. (By Ms. Berkower) Do you know if Lieutenant 19 Governor Dewhurst had any communications about what 20 forms of ID to include in SB 14?</p> <p>21 A. He did not in the original filing of SB 14 in 22 November of 2010, but he did get briefed and was aware 23 of what was included before it was given the number SB 24 14 in the January time frame.</p> <p>25 Q. Did Lieutenant Governor vote on the amendments</p>	<p>299</p> <p>1 In this case, the committee of origin was 2 the Committee of the Whole, so we could have appointed 3 any of the senators to that conference committee. 4 Typically, deference is given to the committee -- the 5 bill author or sponsor, and they will request their five 6 members.</p> <p>7 Q. Is it unusual for the conference committee to 8 insert a new provision into legislation?</p> <p>9 A. No.</p> <p>10 Q. Why did the conference committee change the 11 structure of the free ID offered in SB 14?</p> <p>12 MR. FREDERICK: Objection, legislative 13 privilege.</p> <p>14 Instruct you not to answer.</p> <p>15 A. I'm sorry. I can't answer that.</p> <p>16 Q. (By Ms. Berkower) What was the reason the 17 conference committee removed the provision that would 18 have allowed a tribal ID to be used under SB 14?</p> <p>19 MR. FREDERICK: Objection, legislative 20 privilege.</p> <p>21 Instruct you not to answer.</p> <p>22 A. I'm sorry. I can't answer that.</p> <p>23 Q. (By Ms. Berkower) What was the purpose of the 24 conference committee's decision to remove the provision 25 that would require that voter education would be</p>
<p>298</p> <p>1 offered to SB 14?</p> <p>2 A. No. He was not allowed to do so unless there 3 was a tie.</p> <p>4 Q. Were any amendments introduced during the 5 Committee of the Whole?</p> <p>6 A. No. I don't believe so. It was passed out 7 without amendments, and the amendments occurred on the 8 Senate floor.</p> <p>9 Q. Did the Lieutenant Governor play any role in 10 the conference committee's consideration of SB 14?</p> <p>11 A. He designates the conference committee 12 membership and then determines whether or not the 13 conference committee can be brought -- the conference 14 committee report can be brought up on the floor, so yes, 15 he does.</p> <p>16 Q. Is that something you're involved with as well?</p> <p>17 A. Yes.</p> <p>18 Q. What is your involvement with that process?</p> <p>19 A. I double-check to make sure the conference 20 committee report is complete, that the side-by-side 21 analysis and all the materials that are necessary in 22 that package are there. When determining who's on the 23 conference committee, we look at the members. There's 24 always five members of the conference. Two of them have 25 to be from the committee of origin.</p>	<p>300</p> <p>1 targeted at low income and minority voters?</p> <p>2 MR. FREDERICK: Objection, legislative 3 privilege.</p> <p>4 Instruct you not to answer.</p> <p>5 A. I'm sorry. I can't answer that.</p> <p>6 Q. (By Ms. Berkower) What was the purpose of the 7 conference committee's decision to remove the provision 8 to require -- to allow temporary driving licenses that 9 contain a photo to be used under SB 14?</p> <p>10 MR. FREDERICK: Objection, legislative 11 privilege.</p> <p>12 Instruct you not to answer.</p> <p>13 A. Sorry. I can't answer that.</p> <p>14 Q. (By Ms. Berkower) Why is the conference -- 15 what was the purpose of the conference committee's 16 decision to remove the provision that would have 17 required affidavits for provisional voters to be 18 available in each polling place?</p> <p>19 MR. FREDERICK: Objection, legislative 20 privilege.</p> <p>21 Instruct you not to answer.</p> <p>22 A. Sorry. I can't answer that.</p> <p>23 Q. (By Ms. Berkower) Did the Lieutenant Governor 24 ever discuss whether SB 14 might disproportionately 25 impact minority voters?</p>



<p style="text-align: center;">301</p> <p>1 MR. FREDERICK: Objection, legislative 2 privilege. 3 Instruct you not to answer. 4 A. I'm sorry. I can't answer that. 5 Q. (By Ms. Berkower) Was the Lieutenant Governor 6 concerned that SB 14 might disproportionately impact 7 minority voters? 8 MR. FREDERICK: Objection, relevance. 9 Objection, legislative privilege. 10 Instruct you not to answer. 11 A. I'm sorry. I can't answer that. 12 Q. (By Ms. Berkower) Did the Lieutenant Governor 13 believe he had an obligation pursuant to Section 5 of 14 the Voting Rights Act to determine whether SB 14 might 15 impact minority voters? 16 MR. FREDERICK: Objection, relevance. 17 Objection, legislative privilege. 18 Instruct you not to answer. 19 A. I'm sorry. I can't answer that. 20 Q. (By Ms. Berkower) Are you aware of any 21 legislators making any statements about illegal aliens 22 voting? 23 MR. FREDERICK: Let me just object and 24 instruct you. I mean, to the extent these are 25 confidential nonpublic communications, I would instruct</p>	<p style="text-align: center;">303</p> <p>1 A. I'm sure I have. I don't remember it. 2 Q. Is it a press release that Lieutenant Governor 3 issued after SB 14 was passed? 4 A. Yes. 5 Q. Do you see that on the second to the -- well, 6 do you see the last sentence says "Voter ID will help 7 stamp out voter fraud and increase public confidence in 8 our elections process by ensuring that only U.S. 9 citizens who are legally eligible vote in Texas elections." Did I read that correctly? 10 A. Yes, you did. 11 Q. Why does this press release reference the need 12 to ensure only U.S. citizens vote? 13 MR. FREDERICK: Objection, relevance. 14 Objection, calls for speculation. 15 As to the extent that this calls for you 16 to reveal the Lieutenant Governor's thought process 17 about the bill, I'll instruct you not to answer on the 18 basis of privilege. 19 A. I'm not aware of the answer to your 20 question. I didn't remember this statement. 21 Q. (By Ms. Berkower) Did you review this press 22 release before it went out? 23 A. I don't think so. 24 Q. Did you participate in the drafting at all?</p>
<p style="text-align: center;">302</p> <p>1 you not to reveal it. 2 THE WITNESS: Yeah. 3 MR. FREDERICK: But if you can answer 4 without revealing privileged communications, you may do 5 so. 6 A. Well, I know Representative Brown made her 7 statement on the House floor, but I'm not aware of that 8 statement being made on the Senate floor. 9 Q. (By Ms. Berkower) What about private 10 statements about illegal aliens voting, do you know of 11 any? 12 A. I'm not aware of any. 13 Q. Have you ever heard any Texas State legislator 14 who voted in favor of Senate Bill 14 say that it would 15 prevent racial or ethnic minorities from voting in 16 Texas? 17 MR. FREDERICK: Objection, relevance. And 18 objection on the basis of privilege. 19 But you may answer the yes-or-no question 20 whether you've ever heard it. 21 A. No, I've not. I've not heard of that. 22 (Exhibit 111 marked for identification.) 23 Q. (By Ms. Berkower) Do you recognize this? 24 A. Yes, I do. 25 Q. Have you seen this before?</p>	<p style="text-align: center;">304</p> <p>1 A. I don't -- I don't think so. 2 Q. What's the basis for saying that the public 3 needs an increase of confidence that only U.S. citizens 4 are participating in elections? 5 MR. FREDERICK: Objection, calls for 6 speculation. Objection, relevance. Also object to the 7 extent it calls for privileged communications or thought 8 process. 9 So to the extent you can answer without 10 revealing privilege, you may do so. If you can't, I 11 instruct you not to answer. 12 A. As I've said before today, I do think that 13 there -- that one of the objectives of the voter ID 14 legislation was to increase public confidence in the 15 election process and ensure there wasn't voter fraud, 16 and it's fraudulent for people who are not U.S. citizens 17 to vote. 18 Q. (By Ms. Berkower) How does photo ID at the 19 polls ensure that only U.S. citizens are voting? 20 MR. FREDERICK: Objection. To the extent 21 it calls for any privileged matters, I instruct you not 22 to answer. If you can answer without revealing that, 23 you may do so. 24 A. I think the intent was to make it -- make the 25 election process a stronger process to put additional</p>



<p style="text-align: center;">305</p> <p>1 safeguards in place to ensure that U.S. citizens were 2 voting and not people voting illegally. And so to that 3 extent, while it may not be perfect, it's better than 4 our current system.</p> <p>5 Q. (By Ms. Berkower) But how does the ID 6 requirement speak to citizenship at all if it's possible 7 as a noncitizen to get some of the IDs that are 8 permitted under SB 14?</p> <p>9 MR. FREDERICK: Objection, argumentative. 10 Objection, calls for speculation. Objection, relevance. 11 You may answer if you can.</p> <p>12 A. I'm under the impression or understanding that 13 many of the IDs state whether or not a person is a 14 citizen or a legal alien. For purposes -- for that 15 purpose, then it would be evident to the poll workers.</p> <p>16 Q. (By Ms. Berkower) Well, what if the Texas 17 driver's license did not actually include that 18 information?</p> <p>19 MR. FREDERICK: Objection, calls for 20 speculation.</p> <p>21 A. I think it does.</p> <p>22 Q. (By Ms. Berkower) What's your basis for 23 thinking that?</p> <p>24 A. I thought that it says on the back of it if 25 you're -- like it expires when your Visa expires or</p>	<p style="text-align: center;">307</p> <p>1 willing to go with the Texas legislature. I mean, there 2 are extremes that are ridiculous.</p> <p>3 However, I think the goal of the voter ID 4 legislation was to ensure that we increase the integrity 5 of the elections process and made it a little bit 6 tighter so that it was One Person, One Vote, and you 7 knew the person who registered was the person that 8 actually showed up to vote.</p> <p>9 Q. But it doesn't actually do anything to keep 10 citizens -- noncitizens from voting, does it?</p> <p>11 MR. FREDERICK: Objection, argumentative. 12 A. Well, I think when somebody shows up with a 13 passport, you have at least an increased level of 14 security that they are a U.S. citizen, and therefore, 15 they've met a threshold that wasn't there before.</p> <p>16 Q. (By Ms. Berkower) Did you ever have any 17 communications with Bryan Hebert about whether showing 18 two forms of nonphoto ID would make the electoral system 19 more secure?</p> <p>20 MR. FREDERICK: I'm going to object on the 21 basis of privilege. To the extent that you can answer 22 by identifying a conversation on the general subject 23 matter, you may do so, but don't reveal the substance of 24 any conversation with Mr. Hebert.</p> <p>25 A. I know that I received a lot of summary</p>
<p style="text-align: center;">306</p> <p>1 something along those lines. It's that kind of 2 language. I don't remember exactly.</p> <p>3 Q. Is your citizenship listed on your Texas 4 driver's license?</p> <p>5 A. No. I don't think it is, but it may be 6 included in the magnetic strip, come to think of it. 7 That being said, I think that it's for people who have a 8 Visa that it says that it expires when the Visa expires.</p> <p>9 Q. Isn't citizenship assessed during the voter 10 registration process?</p> <p>11 A. I'm not aware. I think you have to swear that 12 you are a citizen.</p> <p>13 Q. Do you swear under penalty of perjury?</p> <p>14 A. That's my memory, yes.</p> <p>15 Q. Does that not provide any deterrent to people 16 who aren't citizens trying to register?</p> <p>17 MR. FREDERICK: Objection, calls for 18 speculation.</p> <p>19 A. It does provide a deterrent, but it doesn't 20 provide the most that we can do to help make sure that 21 it's One Person, One Vote.</p> <p>22 Q. (By Ms. Berkower) What's the most that we 23 could do to help in your view?</p> <p>24 A. Well, we could probably tattoo everybody with a 25 U.S. state citizenship, but that's not as far as we're</p>	<p style="text-align: center;">308</p> <p>1 information from Bryan Hebert on what was included in 2 each piece of this legislation, what types of IDs were 3 included.</p> <p>4 Q. (By Ms. Berkower) When did you get those 5 communications?</p> <p>6 A. On a regular basis as each piece of legislation 7 was being considered.</p> <p>8 Q. So is this in 2005, 2007, 2009 and 2011?</p> <p>9 A. Yes. I don't really remember 2005 at all, but 10 '07 and '09, '11, yes.</p> <p>11 Q. What was the means by which you received this 12 information?</p> <p>13 A. Sometimes e-mails, sometimes daily briefings, 14 verbal briefings.</p> <p>15 Q. When you were doing the verbal briefings, who 16 else was present?</p> <p>17 A. I don't remember. It's standard operating 18 procedure for me to talk to our policy staff every day 19 about major issues that are going through the 20 legislative process. And I would get briefings every 21 day from every staff person.</p> <p>22 Q. At any time since the passage of SB 14, have 23 you come to believe that the bill will have a 24 retrogressive effect on minority voters?</p> <p>25 MR. FREDERICK: Objection, calls for legal</p>

<p style="text-align: center;">309</p> <p>1 conclusion. Objection, relevance.</p> <p>2 You may answer to the extent you can.</p> <p>3 A. No. I'm not aware of any data that shows</p> <p>4 that. In fact, I think I've seen data that it increased</p> <p>5 minority participation either in Georgia or Indiana, but</p> <p>6 I wouldn't swear to that.</p> <p>7 Q. (By Ms. Berkower) Where did you see that data?</p> <p>8 A. I want to say it was in a newspaper article.</p> <p>9 Q. Which newspaper article?</p> <p>10 A. I don't remember. I'm sorry.</p> <p>11 Q. Do you even remember which newspaper maybe?</p> <p>12 A. No, I don't.</p> <p>13 Q. Do you remember about when you read that</p> <p>14 article?</p> <p>15 A. No, but it would have been during the</p> <p>16 discussion of the last -- after the Indiana case and</p> <p>17 before present time.</p> <p>18 Q. Are you involved at all with Lieutenant</p> <p>19 Governor Dewhurst campaign for Senate?</p> <p>20 A. No, I'm not. I mean, other than I hope he does</p> <p>21 well, I mean, you know. No, I'm not paid by the</p> <p>22 campaign in any way.</p> <p>23 Q. Do you have any communication with his campaign</p> <p>24 staff?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: center;">311</p> <p>1 A. First says "Dewhurst push for voter ID for two</p> <p>2 sessions." Second is "Dewhurst supports conservative</p> <p>3 legislation such as voter ID."</p> <p>4 Q. How do those fall into the category of opposing</p> <p>5 illegal immigration?</p> <p>6 MR. FREDERICK: Objection, calls for</p> <p>7 speculation.</p> <p>8 A. I'm -- I don't do politics. This is quoting a</p> <p>9 Jay Rude article and a Houston Chronicle article. So it</p> <p>10 looks like a Richard Durham -- Dunham's article. So it</p> <p>11 appears to me that what they're doing is quoting public</p> <p>12 articles.</p> <p>13 Q. (By Ms. Berkower) Okay. But this is -- if</p> <p>14 this is from his, Dewhurst's campaign website, doesn't</p> <p>15 it indicate that he affiliates voter ID with illegal</p> <p>16 immigration reform?</p> <p>17 MR. FREDERICK: Objection, assumes facts</p> <p>18 not in evidence, calls for speculation, argumentative.</p> <p>19 You can answer if you can.</p> <p>20 A. Well, I wasn't privy to what the thought</p> <p>21 process was for preparing this information.</p> <p>22 Q. (By Ms. Berkower) So it's not privileged, you</p> <p>23 just don't know?</p> <p>24 A. I don't. I don't do campaign work.</p> <p>25 (Exhibit 113 marked for identification.)</p>
<p style="text-align: center;">310</p> <p>1 Q. How often?</p> <p>2 A. Oh, things like can you come over on the</p> <p>3 weekend and stuff envelopes, that sort of thing. Not a</p> <p>4 regular basis. We do communicate with his schedulers at</p> <p>5 the campaign office, and we communicate with the</p> <p>6 scheduler pretty frequently, but that's about</p> <p>7 maintaining a schedule. It's not about substantive</p> <p>8 issues.</p> <p>9 MS. BERKOWER: I'm going to have this</p> <p>10 exhibit, this is 112, I think.</p> <p>11 (Exhibit 112 marked for identification.)</p> <p>12 Q. (By Ms. Berkower) Are you familiar with this?</p> <p>13 A. Oh, yes, I've seen this.</p> <p>14 Q. What is this?</p> <p>15 A. I've seen it in commercials.</p> <p>16 Q. Can you turn to Page 3, please?</p> <p>17 A. Okay.</p> <p>18 Q. Is this a printout of Lieutenant Governor</p> <p>19 Dewhurst's campaign website?</p> <p>20 A. I really don't know. It looks like it.</p> <p>21 Q. Do you see the section in the middle of the</p> <p>22 third page?</p> <p>23 A. "Strongly opposes illegal immigration," yes.</p> <p>24 Q. What are the first two measures that it says</p> <p>25 "Support"?</p>	<p style="text-align: center;">312</p> <p>1 Q. (By Ms. Berkower) Are you familiar with this?</p> <p>2 A. Oh, yes, I've read this.</p> <p>3 Q. Did you write this?</p> <p>4 A. No, I did not.</p> <p>5 Q. Is this a press release from the Lieutenant</p> <p>6 Governor's office?</p> <p>7 A. Yes, it is.</p> <p>8 Q. When did this come out?</p> <p>9 A. March 12, 2012.</p> <p>10 Q. And what is the substance of the press release?</p> <p>11 A. He is opposing the Justice Department's</p> <p>12 blocking of Texas voter ID law.</p> <p>13 Q. What's the -- does it say that "the Texas voter</p> <p>14 ID law allows for numerous forms of government-issued</p> <p>15 photo identification, including passports and concealed</p> <p>16 handgun licenses. Offers free identification for those</p> <p>17 in need, and also provides voter education poll worker</p> <p>18 training, ensuring every legal citizen can exercise</p> <p>19 their right to vote"?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Why does this press release affiliate</p> <p>22 citizenship with the voter ID law?</p> <p>23 MR. FREDERICK: Objection, calls for</p> <p>24 speculation. Objection, relevance.</p> <p>25 You can answer if you know.</p>



<p style="text-align: center;">313</p> <p>1 A. I don't -- I don't know the answer to that. 2 Q. (By Ms. Berkower) If you were called to trial, 3 would you testify that SB 14 has no discriminatory 4 purpose? 5 A. I don't know the answer to that. 6 Q. You don't know whether SB 14 has a 7 discriminatory purpose? 8 A. From my perspective, it does not, but I don't 9 know everybody else's perspective. 10 Q. If you were called to trial, would you testify 11 that SB 14 has no discriminatory effect on minorities? 12 A. I don't know the answer to that. It hasn't 13 gone into effect here in Texas. 14 MS. BERKOWER: Can we check the time? 15 (Brief discussion off the record.) 16 MS. BERKOWER: This is going to be Exhibit 17 113; is that right? 114. 18 (Exhibit 114 marked for identification.) 19 Q. (By Ms. Berkower) Do you recognize this? 20 MR. FREDERICK: Let me ask before we go 21 on. 22 MS. BERKOWER: Yeah. 23 MR. FREDERICK: How much longer do you 24 think we've got? 25 MS. BERKOWER: I think we're going to go</p>	<p style="text-align: center;">315</p> <p>1 he mean by that? 2 MR. FREDERICK: Objection, calls for 3 speculation. Also object on the basis of privilege. 4 To the extent it seeks the Lieutenant 5 Governor's thought process, if you can answer without 6 revealing privileged matters, you can do so. 7 A. During the Committee of the Whole process, I 8 know he sat through all of the testimony, and some of 9 the testimony dealt with deceased voters and people who 10 are not qualified to vote voting, and therefore, this 11 could be based on his experience in that committee 12 process. 13 Q. (By Ms. Berkower) In your mind, what's the 14 definition of "voter impersonation"?</p> <p>15 MR. FREDERICK: Objection, relevance, but 16 you may answer if you can. 17 A. Well, my impression would be that someone who's 18 not the person on the voter registration certificate 19 showed up and voted in their name. 20 Q. (By Ms. Berkower) Did you fact check that 21 statement? 22 A. Not that I remember. I don't remember these 23 talking points. 24 MS. BERKOWER: This will be 115. 25 (Exhibit 115 marked for identification.)</p>
<p style="text-align: center;">314</p> <p>1 to the full seven hours. I have some, but then we're 2 going to give it over to Mr. Harris. 3 MR. FREDERICK: Okay. Well, can we go off 4 the record for just a minute? 5 (Discussion off the record.) 6 Q. (By Ms. Berkower) Okay. Do you recognize 7 this? 8 A. I see what it is. 9 Q. What is it? 10 A. It's talking points for -- or draft talking 11 points for the voter ID bill signing. 12 Q. For Lieutenant Governor Dewhurst? 13 A. I don't know, but that would be consistent 14 with -- 15 Q. Have you reviewed -- have you seen this 16 document before? 17 A. I don't remember it, but this is the format his 18 talking points take. 19 Q. Do you know if you were involved in the 20 drafting of this document? 21 A. Not that I remember, but I could be involved in 22 the fact-checking of it. 23 Q. It says in the top line, "We know" -- or sorry, 24 the top -- the first line of the second paragraph says, 25 "We know the threat of voter fraud is real." What did</p>	<p style="text-align: center;">316</p> <p>1 Q. (By Ms. Berkower) Do you recognize this? 2 A. Yes, I think so. 3 Q. Did you draft this? 4 A. No, I didn't. 5 Q. What is this? 6 A. I think these were talking points prepared by 7 Bryan Hebert. 8 Q. What was the occasion for which these talking 9 points were prepared? 10 A. I don't remember a specific occasion but more 11 along the lines of it being a list of things -- of 12 comments that could be made about voter ID legislation. 13 Q. What were these talking points adapted -- I'm 14 sorry. Were these talking points adapted or approved by 15 Lieutenant Governor? 16 A. He doesn't typically adopt or approve talking 17 points, and frequently, they're from talking points that 18 we give him. 19 Q. Do you know if these talking points were 20 distributed to other legislators? 21 A. I'm not aware of it, but it wouldn't surprise 22 me at all if they were shared with at least Senator 23 Fraser's office and perhaps people in the House. 24 Q. Why wouldn't it surprise you? 25 A. Because we typically coordinate something like</p>



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<p>1 this with other people working on the issues. We do it 2 on all kinds of issues. The budget summaries are 3 typical. Everybody gets copies of them.</p> <p>4 Q. This says that the bill is similar to Indiana 5 and Georgia laws, both of which were upheld by federal 6 authorities. Didn't you testify earlier that there are 7 a number of IDs acceptable under those laws that are not 8 acceptable under SB 14?</p> <p>9 MR. FREDERICK: Objection, argumentative. 10 Misstates prior testimony.</p> <p>11 A. I think Matt's right. I think that misstates. 12 I think there are some additional or differences in 13 Indiana and Georgia laws, but I don't know what they 14 are. And this does say they're similar, not identical.</p> <p>15 MS. BERKOWER: I guess I might do maybe 16 two at a time if that's all right?</p> <p>17 A. That would be a good thing. Anything that's 18 faster.</p> <p>19 MR. FREDERICK: Yeah, yeah.</p> <p>20 MS. BERKOWER: This is going to be 116 and 21 117, I guess.</p> <p>22 (Exhibits 116 and 117 marked for 23 identification.)</p> <p>24 MS. BERKOWER: Matt, will you look on with 25 her in the interest of time?</p>	<p>1 that are permitted under the Georgia law that are not 2 permitted under SB 14?</p> <p>3 A. Yes.</p> <p>4 Q. Turning your attention to the Indiana law. On 5 the first page of that exhibit, Item 4.</p> <p>6 A. Uh-huh.</p> <p>7 Q. The document was issued by the United States or 8 the state of Indiana. Does that -- does that show that 9 there are some IDs permitted under Indiana law that are 10 not permitted under SB 14?</p> <p>11 A. Well, as long as those IDs have all the 12 additional information listed above, an expiration of 13 photograph, and it probably does provide -- apply to the 14 expanded list of identification cards.</p> <p>15 Q. So turning back to the talking points.</p> <p>16 A. These?</p> <p>17 Q. Yes.</p> <p>18 A. Okay.</p> <p>19 Q. I don't remember which number that is.</p> <p>20 A. 115.</p> <p>21 Q. Turning back to 115, it says that "SB 14 is 22 similar to Indiana and Georgia laws, both of which were 23 upheld by federal authorities." Do you think that's an 24 accurate characterization of SB 14?</p> <p>25 A. Yes, I do. I do think they're similar. The</p>

<p style="text-align: center;">321</p> <p>1 conducted research, not what she found or how it 2 influenced her?</p> <p>3 MR. FREDERICK: Yeah. I think that goes 4 to thought process and mental impressions of the 5 Lieutenant Governor's. So, yes, I'll stand by the 6 objection.</p> <p>7 MS. BERKOWER: Well, she already testified 8 that she spoke with people from Indiana about their 9 voter ID law. So --</p> <p>10 MR. FREDERICK: And objection, asked and 11 answered. I mean, I think research is different than 12 did you have conversations, because research would be a 13 legislative investigation, whereas conversations with 14 people outside the state, I think I permitted that 15 question, because I think it's arguable that that would 16 not be a privileged communication to the extent it's 17 just another person outside the legislature. I think 18 this is different, and I stand by that objection.</p> <p>19 MS. BERKOWER: Okay. So just so I'm clear 20 on it, it's because it was material considered by her in 21 her legislative capacity, is that your objection?</p> <p>22 MR. FREDERICK: I think the question seeks 23 to determine the character and content of a legislative 24 investigation made concerning a pending bill, so yes.</p> <p>25 MS. BERKOWER: Okay.</p>	<p style="text-align: center;">323</p> <p>1 Q. Oh, I see. "Dewhurst for Texas." 2 A. Yes. 3 Q. Why did Michael Walz copy Buddy Barfield on the 4 e-mail?</p> <p>5 MR. FREDERICK: Objection, calls for 6 speculation.</p> <p>7 A. I don't know. I mean, he may have just been 8 telling him about it.</p> <p>9 Q. (By Ms. Berkower) Does your office usually 10 copy the campaign on communications such as this?</p> <p>11 A. Typically, it -- I mean, when they do the 12 distribution of the actual statement, that's when that 13 distribution takes place. That's my understanding of 14 it. They're on the distribution list that goes out.</p> <p>15 Q. Was Lieutenant Governor aware of the 16 possibility that a lawsuit might be brought to obtain 17 preclearance?</p> <p>18 MR. FREDERICK: Objection, to the extent 19 it calls for speculation.</p> <p>20 Also to the extent that it calls for his 21 thought process and mental impressions about pending 22 legislation, I instruct you not to answer on the basis 23 of privilege.</p> <p>24 A. Okay. I'm sorry. I can't answer that. I'm 25 sorry. I can't answer that.</p>
<p style="text-align: center;">322</p> <p>1 (Exhibit 118 marked for identification.)</p> <p>2 Q. (By Ms. Berkower) Do you recognize this?</p> <p>3 A. Oh, yes. Uh-huh. This is a draft.</p> <p>4 Q. What is this?</p> <p>5 A. This is a draft of the statement that came out 6 and is referenced as number -- whatever this one was, 7 113.</p> <p>8 Q. Which statement?</p> <p>9 A. It's a draft of that --</p> <p>10 Q. Oh, Exhibit 113?</p> <p>11 A. Yeah.</p> <p>12 Q. Sorry. Okay. Sorry. I didn't -- I see that.</p> <p>13 Okay. This is ultimately what became Exhibit 113, that 14 press release?</p> <p>15 A. Right.</p> <p>16 Q. Did you participate in the drafting of this?</p> <p>17 A. No, I didn't. He sent me a copy of it though.</p> <p>18 Q. Who is "he"?</p> <p>19 A. Oh, Michael Walz.</p> <p>20 Q. Who's Michael Walz?</p> <p>21 A. He's the communications director for the 22 Lieutenant Governor's office.</p> <p>23 Q. And who's Buddy Barfield?</p> <p>24 A. He's the -- I don't know what his official 25 title is, but he works for the campaign.</p>	<p style="text-align: center;">324</p> <p>1 Q. (By Ms. Berkower) You can't get into whether 2 he knew that judicial preclearance is one way to obtain 3 preclearance?</p> <p>4 A. Apparently not. No.</p> <p>5 Q. Okay. Did the Lieutenant Governor advocate for 6 filing a lawsuit to obtain judicial preclearance?</p> <p>7 A. I don't remember him advocating for a lawsuit.</p> <p>8 Q. Does the Lieutenant Governor support the 9 lawsuit --</p> <p>10 MR. FREDERICK: Objection.</p> <p>11 Q. (By Ms. Berkower) -- to obtain judicial 12 preclearance?</p> <p>13 MR. FREDERICK: Objection, relevance.</p> <p>14 A. I think he supports the legislation. He would 15 support implementation in the legislation.</p> <p>16 MS. BERKOWER: Okay.</p> <p>17 (Exhibit 119 marked for identification.)</p> <p>18 Q. (By Ms. Berkower) This is Exhibit 119. Do you 19 recognize this?</p> <p>20 A. Yes. I've seen this before.</p> <p>21 Q. What is this?</p> <p>22 A. Wait. There's two pages.</p> <p>23 Q. Oh, is it different?</p> <p>24 A. Yes.</p> <p>25 Q. Doesn't go together?</p>



<p style="text-align: center;">325</p> <p>1 A. I don't remember this being together. 2 Q. Okay. Well, let's just take the first page 3 then. 4 A. Yeah. I don't remember the second page. 5 Q. Okay. 6 A. First page I remember. 7 Q. What is this? 8 A. I think this is a summary document, and I don't 9 know if it was prepared by Bryan Hebert or by Fraser's 10 office. 11 Q. Did you work on this? 12 A. No. I received it though. 13 Q. Do you see the bottom section that says "What 14 about people who" -- well, it says, Part 3 says "Likely 15 questions from opponents." 16 A. Uh-huh. 17 Q. Are these talking points? 18 A. I don't -- I don't know that they were ever 19 characterized that way. 20 Q. What was the document used for, do you know? 21 A. I think it was just meant to be informative of, 22 you know, here's what's in the legislation, here's what 23 it does, here's some comments that may be said about it, 24 that sort thing. 25 Q. Under the last section, in the "Likely</p>	<p style="text-align: center;">327</p> <p>1 provide summary information to anybody who might be 2 dealing with a given issue, yes, we would send it out 3 within our office. 4 Q. (By Ms. Berkower) Underneath that bullet point 5 that I read, it says "No voter has come forward in the 6 last three sessions of this debate to claim otherwise, 7 and no such voter has come forward in Indiana or Georgia 8 during the last four years." What's the basis for that 9 statement? 10 A. I can't answer you. I don't know. 11 Q. Do you think that just because no voters have 12 come through in the last three sessions of this debate 13 to claim they couldn't get acceptable ID means that such 14 people don't exist? 15 MR. FREDERICK: Objection, relevance. 16 Objection, argumentative. You may answer. 17 A. I don't know that this sentence can be true 18 without it applying to everyone, so I don't -- I think 19 you can say no voter has come forward in the last three 20 sessions and not mean that no one can get -- I mean, 21 there's no one out there who can't get an ID. 22 Q. (By Ms. Berkower) How do you know if no one 23 can get an ID? 24 MR. FREDERICK: Objection, relevance. 25 Calls for speculation.</p>
<p style="text-align: center;">326</p> <p>1 questions from opponents" section, the last bolded 2 heading says "What about people who do not have access 3 to photo ID?" And the response seems to be, "I'm 4 confidence that every voter in Texas has or can obtain 5 an acceptable photo ID." What's the basis for that 6 statement? 7 MR. FREDERICK: Objection, calls for 8 speculation. Objection, to the extent it calls for 9 legislatively privileged material, I would instruct you 10 not to answer. If you can answer without revealing 11 that, you can do so. 12 A. I don't know what the person who wrote this was 13 thinking, but I do think the legislation set forth 14 opportunities for people to get a free voter ID for 15 voting. 16 Q. (By Ms. Berkower) Did you fact-check that 17 statement? 18 A. No, not that I'm aware. No. 19 Q. Do you know if anybody fact-checked that 20 statement? 21 A. No. 22 Q. Would you generally send documents like this 23 around your office without fact-checking them? 24 MR. FREDERICK: Objection, argumentative. 25 A. Within our office, the point is that you can</p>	<p style="text-align: center;">328</p> <p>1 A. I think you wouldn't know unless somebody 2 brought it up and asked for an ID and couldn't get one. 3 MS. BERKOWER: I think this is going to be 4 our last exhibit. 5 A. Thank you. 6 MS. BERKOWER: He might have more, but 7 this is my last one. 8 (Exhibit 120 marked for identification.) 9 Q. (By Ms. Berkower) Do you recognize this? 10 A. No. I don't remember this one. 11 Q. Do you know what it is? 12 A. I'm reading the interview by the Department of 13 Justice. 14 Q. You've never seen it before? 15 A. Not that I remember. 16 Q. Whose handwriting is in the top right corner, 17 do you know? 18 A. No. It says "Bryan 552, 111, A-L-L." No, I 19 don't know. 20 Q. Do you think that indicates it's Bryan 21 Hebert's? 22 A. I don't recognize the handwriting as being 23 Bryan's, but it could be. 24 Q. So maybe this begs the question, but did you 25 fact check this document?</p>



<p style="text-align: center;">329</p> <p>1 A. No. 2 Q. Are there any answers that you provided today 3 that you now wish to change? 4 A. Not that I can think of. No. 5 Q. Is there any information you didn't recall 6 earlier when I asked you about it but that you now 7 recall? 8 A. Not that I can think of. 9 MS. BERKOWER: Okay. I think that 10 concludes my questions now, but we'll leave open the 11 deposition pending the ruling on the motion we filed on 12 May 21st and any other motions relating to privilege, 13 the assertion of legislative privilege. 14 (Brief discussion off the record.) 15 MR. HARRIS: I'll obviously be brief 16 because of limited time, and I appreciate your time. 17 THE WITNESS: Thank you. And what's your 18 name again? 19 MR. HARRIS: I'm Adam Harris from Fried 20 Frank. We represent the Texas League of Young Voters. 21 EXAMINATION 22 BY MR. HARRIS: 23 Q. Ms. Rathgeber, you previously testified that 24 it's your general practice to maintain hard copy files 25 specific to particular pieces of legislation; is that</p>	<p style="text-align: center;">331</p> <p>1 information for the people that we called in Indiana to 2 come and testify. That's all I remember. 3 Q. And on documents like copies of the bill 4 drafts, would you typically take handwritten notes? 5 A. No. Typically, I don't, because what I'm doing 6 is using them for reference and not to edit them. 7 Q. Apart from this particular file we've been 8 discussing, have you discarded any other documents 9 regarding SB 14 at any time? 10 A. Not that I can think of. I mean, that -- they 11 would be all be in that file. I would have a stack of 12 amendments made or proposed, as well, in that file. 13 Q. You and Ms. Berkower discussed the question of 14 whether SB 362 would have permitted a student ID to vote 15 in Texas. Do you remember that? 16 A. Right. 17 Q. And I believe you stated that it would depend 18 on the interpretation of a section of that bill which 19 refers to -- and I think this is number -- Exhibit 20 Number 29. 21 A. Uh-huh. 22 Q. And I'm looking on Page 6. I believe you 23 stated that the answer to that question would depend on 24 the interpretation of language that states that a voter 25 can vote with a valid identification card that contains</p>
<p style="text-align: center;">330</p> <p>1 right? 2 A. During the legislative session, it is. 3 Q. And you maintain such files for SB 14; is that 4 right? 5 A. Yes. I did have a small file on SB 14. 6 Q. And you stated that you discarded these files 7 after the legislative session; is that right? 8 A. Yes. 9 Q. Approximately when would that have been, what 10 month? 11 A. Well, it would be the first of -- of doing it 12 in the first week of the special session following the 13 regular session, because I was cleaning out to make sure 14 we had room to do the special. So it would have been 15 the first week of June. 16 Q. Of 2011? 17 A. Oh, yeah, I'm sorry. Uh-huh. 18 Q. And what were the contents of this file that 19 you discarded? 20 A. Typically, I keep each of the bill drafts in 21 case I need to look back and see how any bill is 22 changed. It's faster sometimes than trying to print 23 them off the computer system. Fiscal notes, again, I 24 keep those, even though that they are -- everything I 25 have is online mostly. I think I had contact</p>	<p style="text-align: center;">332</p> <p>1 the person's photograph and is issued by -- under 2 Subpart B, an agency, institution or political 3 subdivision of the state. 4 A. Right. 5 Q. If Senator Fraser had stated publicly on the 6 record during the vote on SB 362 that he interpreted 7 this language to mean that a student at at least a 8 public state Texas college or university could vote with 9 a student ID, would you have any reason to doubt that 10 interpretation? 11 A. No, I wouldn't. He's the bill author. 12 Q. Do you have any reason to question the validity 13 of an ID issued by a state institution such as your alma 14 mater, the University of Texas? 15 MR. FREDERICK: Objection, relevance. 16 A. I don't -- I don't know why validity is the 17 correct word. Either you're a student or you're not. 18 Either they issue an ID or they don't. I don't 19 understand the question, I don't think. 20 Q. Do you have any reason to question the value of 21 a student ID when it comes to proving that one is who he 22 or she says he or she is? 23 MR. FREDERICK: Objection, relevance. 24 A. I mean, I don't think so. I think you have to 25 show some forms in order to attend higher education.</p>



<p style="text-align: center;">333</p> <p>1 Q. (By Mr. Harris) And you and Ms. Berkower also 2 discussed the question of whether one could vote with an 3 expired ID under SB 14 and under previous iterations of 4 the bill. You remember that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. And I believe it was your testimony, but please 7 correct me if I'm wrong, but that the reason that you 8 think a bill might exclude an expired ID is that because 9 people change and their looks change, it makes it harder 10 to prove using the expired ID that the person is who she 11 says she is; is that right?</p> <p>12 A. That's what I said, yes.</p> <p>13 Q. You testified that a driver's license in Texas 14 is valid for six years; is that right?</p> <p>15 A. I think that's correct.</p> <p>16 Q. Do you know how long a passport is valid?</p> <p>17 A. I think it's ten years, except for children, 18 it's five years.</p> <p>19 Q. Now, I know you said that you don't do 20 politics; is that right?</p> <p>21 A. I try not to.</p> <p>22 Q. But I assume that, you know, in your role as 23 someone who works for an elected official, you at least 24 generally follow elections in Texas; is that right?</p> <p>25 A. Well, yes, but publicly. I don't work on the</p>	<p style="text-align: center;">335</p> <p>1 A. I have heard Governor Dewhurst say things about 2 the growth in the Hispanic population being the future 3 of Texas. That where goes the Hispanic population, 4 there goes the State of Texas. That's not specific to 5 voting. It's more about the demographics of the state.</p> <p>6 Q. (By Mr. Harris) And when did you hear 7 Lieutenant Governor make those statements?</p> <p>8 A. He's made those statements with regard to 9 education and economic development, in jobs programs and 10 the military. That's all that comes to mind right now.</p> <p>11 Q. I think as you've previously stated, today is 12 an election today in Texas; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And the Lieutenant Governor is on the ballot in 15 the Republican primary for the U.S. Senate; is that 16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Have you had discussions with Lieutenant 19 Governor about this current primary election?</p> <p>20 MR. FREDERICK: Objection, relevance.</p> <p>21 A. Only insofar as it affects my future employment.</p> <p>22 Q. (By Mr. Harris) Gotcha. It's an important topic to you, I'm sure.</p> <p>23 A. Or lack thereof is really what it is.</p>
<p style="text-align: center;">334</p> <p>1 election.</p> <p>2 Q. Uh-huh. Are you generally aware of disparities 3 on how particular -- are you generally aware of 4 disparities on how particular racial or ethnic groups 5 vote in Texas?</p> <p>6 MR. FREDERICK: Objection, relevance.</p> <p>7 A. I don't think I understand the word 8 "disparities."</p> <p>9 Q. (By Mr. Harris) Are you aware of any 10 propensities for a particular group to support one party 11 more regularly than it supports the other party?</p> <p>12 MR. FREDERICK: Objection, relevance.</p> <p>13 A. I've certainly read articles about it, but I 14 don't know how valid that is. I haven't read any valid 15 all Hispanics vote this way, all White people vote that 16 way.</p> <p>17 Q. (By Mr. Harris) What have you read?</p> <p>18 A. That generally there's a tendency for Hispanic 19 voters to vote Democratic.</p> <p>20 Q. Have you ever discussed that fact with the 21 Lieutenant Governor?</p> <p>22 A. No.</p> <p>23 Q. Have you ever discussed the importance of the 24 Hispanic vote in general with the Lieutenant Governor?</p> <p>25 MR. FREDERICK: Objection, relevance.</p>	<p style="text-align: center;">336</p> <p>1 Q. Have you followed the public polling in the 2 race at all?</p> <p>3 A. I've read the newspapers about it, yes.</p> <p>4 Q. And do you have a sense of who the chief 5 opposition is to Lieutenant Governor in the race?</p> <p>6 A. In the Republican Party, the Democratic Party?</p> <p>7 Q. Yeah, in the Republican primaries. Excuse me.</p> <p>8 A. Yes.</p> <p>9 Q. And who is that?</p> <p>10 A. Well, the top two candidates beneath the 11 Lieutenant Governor are Leppert and Cruz.</p> <p>12 Q. And is it correct that recent polling has 13 Mr. Cruz, I guess, in second behind the Lieutenant 14 Governor in the -- in the primary for the U.S. Senate?</p> <p>15 MR. FREDERICK: Objection, relevance.</p> <p>16 A. I've seen it with Leppert in second, as well. 17 I mean, it's just been in the newspaper. I don't know 18 how reliable that polling is.</p> <p>19 Q. (By Mr. Harris) Do you have any understanding 20 of Mr. Cruz's ethnic background?</p> <p>21 MR. FREDERICK: Objection, relevance.</p> <p>22 A. Yes.</p> <p>23 Q. (By Mr. Harris) And what is that 24 understanding?</p> <p>25 A. I'm aware his father came from Cuba.</p>



<p style="text-align: center;">337</p> <p>1 Q. Have you had any discussions with Lieutenant 2 Governor regarding the Hispanic vote in this year's 3 Republican Senate primary?</p> <p>4 MR. FREDERICK: Objection, relevance.</p> <p>5 A. No, I haven't.</p> <p>6 Q. (By Mr. Harris) Are you familiar with an 7 organization known as King Street Patriots?</p> <p>8 A. I have seen it on Governor Dewhurst's schedule, 9 but I have not -- I don't know what they do. I think 10 they're a tea party organization, but I don't know that 11 for a fact.</p> <p>12 Q. Do you know whether the Lieutenant Governor's 13 office had any communications with the King Street 14 Patriots about SB 14?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Do you know whether the Lieutenant Governor's 17 office had any communications with the King Street 18 Patriots about prior iterations of voter ID law in 19 Texas?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Do you know whether the Lieutenant Governor has 22 ever attended events hosted or sponsored by the King 23 Street Patriots?</p> <p>24 A. Yes. I know he has.</p> <p>25 Q. And what events are those?</p>	<p style="text-align: center;">339</p> <p>1 have been public testimony that people feel like giving 2 an ID is -- for a vote is not onerous, because it's the 3 same as writing a check or getting on an airplane. And 4 I know there's been testimony to that effect.</p> <p>5 Q. Do you recall particular testimony to that 6 effect?</p> <p>7 A. Yeah. I can't tell you who it was or who did 8 it, but I know I've heard that. It would have been in 9 public.</p> <p>10 Q. Well, I appreciate your time, and as promised, 11 we'll try to get you out of here.</p> <p>12 A. I appreciate it.</p> <p>13 MR. HARRIS: Thank you. And that will 14 conclude the deposition for the defense interveners 15 subject to reopening the court rules on the motion to 16 compel.</p> <p style="text-align: right;">(Deposition concluded at 4:12 p.m.)</p>
<p style="text-align: center;">338</p> <p>1 A. I don't know. I've just seen that on his 2 schedule. That would not have been handled through the 3 state office. It would have been a campaign event, and 4 I wouldn't be privy to that information.</p> <p>5 Q. Do you know whether the Lieutenant Governor has 6 recently attended any events hosted or sponsored by the 7 King Street Patriots?</p> <p>8 A. Yeah. I don't know how recent, but yes, I 9 think he has been through this campaign season.</p> <p>10 Q. You testified that it's your belief that the 11 voter ID law would increase voter confidence in 12 elections in Texas; is that right?</p> <p>13 A. Yes.</p> <p>14 MR. FREDERICK: Object to the extent it 15 misstates prior testimony, but you can answer.</p> <p>16 A. Right. I do think it increases voter 17 confidence to have a more secure election process.</p> <p>18 Q. (By Mr. Harris) When did you come -- when did 19 you come to that conclusion?</p> <p>20 MR. FREDERICK: Objection, relevance.</p> <p>21 A. I don't remember the time frame, but it's my 22 personal belief.</p> <p>23 Q. (By Mr. Harris) Have you ever heard any voters 24 in Texas express that belief?</p> <p>25 A. I want to say in testimony I have, but it would</p>	<p style="text-align: center;">340</p> <p>1 CHANGES AND SIGNATURE 2 RE: TEXAS VS. HOLDER, ET AL 3 PAGE LINE CHANGE REASON 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 I, JULIA RATHGEBER, have read the foregoing 21 deposition and hereby affix my signature that same is 22 true and correct, except as noted above. 23 _____ 24 _____ 25 JULIA RATHGEBER</p>



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1 THE STATE OF _____
 2 COUNTY OF _____
 3

4 Before me, _____, on this day
 5 personally appeared JULIA RATHGEBER, known to me (or
 6 proved to me under oath or through _____
 7 (description of identity card or other document) to be
 8 the person whose name is subscribed to the foregoing
 9 instrument and acknowledged to me that they executed the
 10 same for the purposes and consideration therein
 11 expressed.

12 Given under my hand and seal of office
 13 this _____ day of _____, 2012.

14
 15
 16
 17 NOTARY PUBLIC IN AND FOR
 18 THE STATE OF _____
 19
 20
 21
 22
 23
 24
 25

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLUMBIA

3 STATE OF TEXAS, _____)

4 Plaintiff, _____)

5 VS. _____)

6 ERIC H. HOLDER, JR. in his _____)
 official capacity as Attorney)

7 General of the United States, _____)

8 Defendant, _____)

9 ERIC KENNIE, et al., _____)

10 Defendant-Intervenors, _____)

11 TEXAS STATE CONFERENCE OF _____) CASE NO. 1:12-CV-00128
 NAACP BRANCHES, _____) (RMC-DST-RLW)

12) Three-Judge Court

13 Defendant-Intervenors, _____)

14 TEXAS LEAGUE OF YOUNG VOTERS) EDUCATION FUND, et al., _____)

15 Defendant-Intervenors, _____)

16 TEXAS LEGISLATIVE BLACK) CAUCUS, et al., _____)

17 Defendant-Intervenors, _____)

18 VICTORIA RODRIGUEZ, et al., _____)

19 Defendant-Intervenors. _____)

20 REPORTER'S CERTIFICATION
 DEPOSITION OF JULIA RATHGEBER
 MAY 29, 2012

21 I, Chris Carpenter, Certified Shorthand Reporter in
 22 and for the State of Texas, hereby certify to the
 23 following:
 24 That the witness, JULIA RATHGEBER, was duly sworn by

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1 the officer and that the transcript of the oral
 2 deposition is a true record of the testimony given by
 3 the witness;

4 That the deposition transcript was submitted on the
 5 _____ day of _____, 2012, to the witness or to the
 6 attorney for the witness for examination, signature and
 7 return to _____, by _____

8 _____, 2012; and if returned, the original
 9 transcript will be forwarded to Risa Berkower, the
 10 custodial attorney;

11 That the amount of time used by each party at the
 12 deposition is as follows:

13 Ms. Berkower: 6 hours, 31 minutes

14 Mr. Harris: 10 minutes

15 I further certify that I am neither counsel for,
 16 related to, nor employed by any of the parties or
 17 attorneys in the action in which this proceeding was
 18 taken, and further that I am not financially or
 19 otherwise interested in the outcome of the action.

20 Certified to me this 31st day of May, 2012

21 
 22 Chris Carpenter, Texas CSR 1151


23 Expiration Date: 12/31/2012

24 100 Congress Avenue, Suite 2000

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